Decision for dispute CAC-UDRP-101006

Case number	**CAC-UDRP-101006**
Time of filing	**2015-06-15 14:41:52**
Domain names	**Sigos.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Keynote SIGOS GmbH**

Complainant representative

Organization	**Gordons Partnership LLP**

Respondent

Organization	**Alphalogix**

IDENTIFICATION OF RIGHTS

The Complainant submits evidence it owns the International Trademark No. 1218759 for SIGOS. The word trademark was registered on 1 April 2014. The trademark was registered for the International Class 09 (Testing and monitoring hardware and software and systems for telecommunications networks consisting thereof), International Class 38 (Providing telecommunications connections for testing and monitoring purposes) and the International Class 42:(Consulting for telecommunications engineering; development and design of concepts regarding test solutions for planning, specification and integration of telecommunications infrastructures, especially of telecommunications networks; providing testing environments, namely software and hardware for telecommunications lines, routings and connections). In his “reply” sent during the proceedings he made a reference to a German trademark registered registered on 5 November 1998.

FACTUAL BACKGROUND

The Claimant is a German telecommunications service provider who is using his registered trademark “SIGOS” in the UK as well. In April 2015 the Complainant sent a letter to the respondent asking for its legitimate interests in using the domain in question. On 6 May 2015, Peter Howe answered that on behalf of the Respondent that the domain in question can be transferred to the Complainant for a fee around 200.000,-£. On 12 June 2015, the Claimant denied this offer and asked for a transfer of the domain within 28 days.

The Respondent registered the domain on 22 July 2000. He used the domain first for a parking website which directly re-directed the user to UK telecommunication providers. At least since April 2015 the Respondent uses the domain for a

“Southsea Independent Gallery of Science”(SIGOS).

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT: The complaint is very unclear. The Complainant did not file a substantial argumentation but simply made a link to the annexed letter it sent to the Respondent in June 2015. Then he sent a non-standard communication letter to the panel on 15 july stating: “We intend to reply to the Respondent’s response within the next seven days and kindly request that no decision relating to the dispute is reached until we have done so.“The panel informed the Complainant on 18 July that such a “reply” is not foreseen in the UDRP. Nevertheless the Complainant sent a non-standard communication letter titled “reply” to the panel on 21 July. On 25 July the respondent sent a letter to the panel complaining that this “reply” is not admissible.

The complainant seemed to have held that he was the owner of the well known “Sigos” name and mark. The use of the domain name is a misrepresentation by the Respondent of an association between the trademark owner and the domain owner. This amounts to passing off.

RESPONDENT (with a word text written by Peter Howe who states that he is the owner of the Respondent) stated that he - Peter Howe - registered the domain in 2000 for a friend who wanted to build an Art Gallery, the Southsea Gallery Science (SIGOS). He was not aware of the existence of the complainant at this time. He received threating letters from the complainant in 2015.

Reading the complaint and the response, the case is rather unclear. Even if the panel integrated the "reply" in his considerations, the complaint is rather dubious.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy). Insofar, it does not matter whether the panel bases its decision on the German or the IR trademark.

NO RIGHTS OR LEGITIMATE INTERESTS

It can be left open whether the Complainant has shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

However, the Complainant has not shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy). The domain was registered for the respondent in 2003/04. The respondent cannot have registered the domain in bad faith as there was no international trademark protection for the complainant at this time. The international trademark forms the basis of this complaint; it was registered in 2014, long after the domain name was registered for the respondent. Furthermore, the claimant held a company´s name at this time which was nearly identical with the domain name in question. However, the name of a company is not protected by the UDRP. Furthermore, there are no exceptional indications why the respondent was behaving in a bad faith manner in registering the domain name.

In addition, the claim cannot be based on the German trademark registered in 1998. First, it has to be noted that the existence of this trademark was only mentioned in the so-called “reply” which was delivered to the panel after the response. In general, the panel cannot use the assumptions delivered in such a late non-standard communication letter. The UDRP provides for a quick decision mechanism which is based on the assistance of the parties which have to prepare their argumentation in a highly skilled and concentrated manner. Uncareful and untimely preparations will automatically lead to procedural injustice at least for one party. This problem can be found here in this case. The complainant first sent no formal complaint to the panel, but only a copy of a former letter he sent months ago to the respondent. Then the respondent sent a formal response which allowed the complainant to counter-attack the arguments of the respondent in a second and more

detailed version of his complaint. This approach would change the burden of proof underlying the UDRP and leads to a situation where the panel would have to ask the respondent again for an amended version of his response. This necessity would undermine the efficiency of the UDRP system; it is thus forbidden by the UDRP rules. The panel has to bear in mind the need for procedural efficiency, it has the obligation to treat each party with equality and ensure that each party has a fair opportunity to present its case. The party submitting its filing would normally need to show its relevance to the case and why it was unable to provide that information in the complaint or response(Delikomat Betriebsverpflegung Gesellschaft m.b.H. v. Alexander Lehner, WIPO Case No. D2001-1447; Wal-Mart Stores, Inc. v. Larus H. List, WIPO Case No. D2008-0193; Metro Sportswear Limited (trading as Canada Goose) v. Vertical Axis Inc. and Canadagoose.com c/o Whois Identity Shield, WIPO Case No. D2008-0754). This justificication is obviously missing in this case.

But even the panel accepts the “reply”, the German trademark mentioned in the reply does not change the legal considerations. The trademark was only registered in Germany; there are no indications why the respondent should have known this trademark in the UK. There is no reasonable evidence that the Complainant and his business was very much known in 2000 in the UK. The German trademark was only valid in Germany. The internationalisation of the trademark system of the complainant only started in 2014 when the Complainant registered his international trademark. Therefore the Respondent did not register the domain in 2000 in bad faith.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The domain name was registered by the British respondent long before a trademark was registered which had any impact in the UK. Therefore, there is no indication that the respondent acted in bad faith when he registered the domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **SIGOS.COM**: Remaining with the Respondent

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2015-07-21

Publish the Decision