

## Decision for dispute CAC-UDRP-104377

Case number	CAC-UDRP-104377
Time of filing	2022-02-28 11:23:37
Domain names	harcourtphotography.com

### Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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### Complainant

Organization	STUDIO HARCOURT
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### Complainant representative

Organization	NAMESHIELD S.A.S.
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### Respondent

Name	Johnson Zhang
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#### OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the Disputed Domain Name.

#### IDENTIFICATION OF RIGHTS

The Complainant claims rights on several trademark registrations composed with the name "HARCOURT", such as:

- the international registration STUDIO HARCOURT No. 451329, registered on March 24, 1980 for goods and services in classes 9, 16, 40 and 42, and duly renewed; and
- the international registration HARCOURT No. 451330, registered on March 24, 1980 for goods and services in classes 9, 16, 40 and 42, and duly renewed.

The Complainant also relies on domain names composed with HARCOURT, such as <studio-harcourt.com>.

#### FACTUAL BACKGROUND

##### FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Created in 1934, the Complainant, the company Studio Harcourt, is a Parisian photography studio known in particular for its black and white photographs of movie stars and celebrities.

Its world-famous label draws its inspiration from the glamorous world of black and white cinema. Through its unique lighting, the company Studio Harcourt reveals the natural beauty and character of every sitter.

The Complainant is the owner of several trademarks containing the name "HARCOURT", such as the international registrations STUDIO HARCOURT No. 451329 and HARCOURT No. 4511330, both registered on March 24, 1980 and renewed (collectively named the "HARCOURT trademarks").

The Respondent registered the domain name <harcourtphotography.com> on February 21, 2022. The Complainant explains that this domain name gave access to a Chinese website selling cars, when the Complaint was filed.

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

#### PARTIES' CONTENTIONS:

##### Confusing similarity

The Complainant submits that the Disputed Domain Name is confusingly similar to the HARCOURT trademarks. The Complainant holds prior rights to the name "HARCOURT".

It contends that the Disputed Domain Name wholly incorporates the distinctive element of the Complainant registered HARCOURT trademarks.

It contends that the addition of the term "photography", which refers to the Complainant's activities, is not sufficient to escape the finding of the confusing similarity with the HARCOURT trademarks. It does not prevent the likelihood of confusion between the Disputed Domain Name and the Complainant's trademarks.

The extension .com is disregarded in the assessment of the similarity.

##### No rights or legitimate interests

The Complainant contends that the Respondent is not known under the Disputed Domain Name in the Whois database and has not acquired trademark rights on "HARCOURTPHOTOGRAPHY".

The Complainant claims that the Respondent has no rights or legitimate interest on the Disputed Domain Name and is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Complainant contends that the Disputed Domain Name resolves to a Chinese website selling cars. The Respondent uses the Disputed Domain Name in a way that fails to confer rights and legitimate interests, as it is used to promote unrelated services.

##### Bad faith

The Complainant contends that the Disputed Domain Name is confusingly similar to the well-known trademark HARCOURT.

Since the Complainant is known for its black-and-white photographs, the association of the term "photography" to the HARCOURT trademark cannot be coincidental.

The Complainant contends that the Respondent could not have ignored the Complainant's trademarks at the moment of the registration of the Disputed Domain Name.

When the Complaint was filed, the Disputed Domain Name resolved to a Chinese website selling cars. The Complainant asserts that the Respondent is using the Disputed Domain Name intentionally to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks.

The Complainant claims that the Respondent is obtaining commercial gain from its use of the Disputed Domain Name and the resolving website.

The Complainant concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

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#### RIGHTS

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has registered rights in the trademarks STUDIO HARCOURT and HARCOURT in 1980 and has duly renewed these trademarks since 1980.

The Disputed Domain Name wholly integrates the Complainant's HARCOURT trademark. The figurative element of the trademark STUDIO HARCOURT is not relevant in the assessment of the identity or confusing similarity with the Disputed Domain Name.

The position of the word HARCOURT at the beginning of the Disputed Domain Name makes the Complainant's trademark HARCOURT immediately recognizable.

The addition of the descriptive term "photography", which refers to the Complainant activities, does not prevent a finding of confusing similarity with the Complainant's trademark. This term refers to the Complainant activities, which are those of a photography studio. This term only reinforces the confusion with the Complainant's trademarks.

It is well established that the addition of the generic Top-Level Domain ".com" is disregarded in the assessment under paragraph 4(a)(i) of the Policy.

Thus, the Disputed Domain Name <harcourtphotography.com> is confusingly similar to the Complainant's trademarks. The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name is 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).

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#### NO RIGHTS OR LEGITIMATE INTERESTS

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed Domain Name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

The Respondent did not respond to the Complaint to rebut Complainant's prima facie case. Consequently, it did not provide any evidence or allege any circumstances to establish that it has rights or legitimate interests in the Disputed Domain Name.

The Complainant has provided evidence that it has registered rights in the trademarks STUDIO HARCOURT and HARCOURT as of 1980, well before the registration of the Disputed Domain Name on February 21, 2022.

The Complainant did not grant any license or authorization to the Respondent to make use of the Complainant's trademark,

or apply for registration of the Disputed Domain Name.

There is no evidence on record showing that the Respondent is commonly known by the Disputed Domain Name or that he acquired trademarks rights on it.

The Complainant claims that the Disputed Domain name resolved to a Chinese website selling cars. However, the copy of the website provided in annex to the Complaint is in Chinese and it is not translated, even partially.

The Panel is of the opinion that the Complainant has demonstrated prima facie that the Respondent lacks right or legitimate interests in respect of the Disputed Domain Name. The Respondent has failed to assert any such rights or legitimate interests.

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Disputed Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy).

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#### BAD FAITH

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or the respondent has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant is known for its black-and-white photographs. The Complainant registered its HARCOURT trademarks long before the registration of the Disputed Domain Name.

The choice of the term "photography" to be added to the HARCOURT trademark proves that the Respondent was targeting the Complainant when it registered the Disputed Domain Name.

A simple Google search of the terms "harcourt photography" shows only results relating to the Complainant.

Given the well-known character of the HARCOURT trademark, the Respondent could not have ignored the Complainant's trademark designating photography when registering the Disputed Domain Name.

The Panel is of the opinion that it is sufficient evidence for a finding of bad faith registration.

When the Complaint was filed, the Complainant asserts that the Disputed Domain Name resolved to a Chinese website selling cars.

The Respondent did not rebut this assertion. Given the well-known character of the Complainant's HARCOURT trademark, and the non-authorized use of the Disputed Domain Name, the Panel is of the opinion that, given the circumstances of the case, that it is sufficient evidence for a finding of bad faith use.

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

The Disputed Domain Name <harcourtphotography.com> incorporates the well-known HARCOURT trademark, with the addition of a generic term that refers to the activities of the Complainant. The addition of this term does not avoid any confusing similarity. The Disputed Domain Name is therefore confusingly similar to the HARCOURT trademarks.

The Respondent is not commonly known by the Disputed Domain Name and is not related in any way with the Complainant nor has ever been authorized by the Complainant to use one of the HARCOURT trademarks to register the Disputed Domain Name.

The Respondent was well aware of the well-known HARCOURT trademarks designating photography when it registered the Disputed Domain Name. Its use, for commercial gain, was not rebutted.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. HARCOURTPHOTOGRAPHY.COM: Transferred
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#### PANELLISTS

Name	Marie-Emmanuelle Haas, Avocat
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DATE OF PANEL DECISION 2022-04-04

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Publish the Decision

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