

Decision for dispute CAC-UDRP-104444

Case number CAC-UDRP-104444

Time of filing 2022-04-21 10:54:49

Domain names uswitchmobiles.com

Case administrator

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

Complainant

Organization uSwitch Limited

Complainant representative

Organization Thomsen Trampedach GmbH

Respondent

Name Miroslaw Zagrodnik

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 owns the UK trademark registration No. UK00002230283 "USWITCH", registered on 23 August 2002 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

The Complainant is uSwitch Limited, a UK-based price comparison service and switching website company, which was founded in 2000.

The Complainant provides information on its services online at <uswitch.com>.

The disputed domain name <uswitchmobiles.com> was registered on 14 April 2020 and is currently not used in connection with an active website. However, it has been used in the past for redirection purposes leading to the online address <smartfony.co.uk>.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the Trademark.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent is not commonly known by the disputed domain name, that the Complainant does not carry out any activity for, nor has any business or affiliation with the Respondent, and that the previous use of the disputed domain name is not a bona fide offering of goods and/or services, since the Respondent has made a commercial use of the disputed domain name competitive to the services provided by the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. It contends that the Respondent must have been aware of the Complainant and its well-known Trademark at the time of registration of the disputed domain name and that the Respondent's commercial use of the disputed domain name to attract traffic to its website by confusing the internet users is evidence of bad faith.

RESPONDENT:

Responded has not substantiated his Response, other than saying that he was not aware of any rights of the Complainant at the time of purchasing the domain name in dispute. All other comments in his Response are of no legal relevance to the case at hand.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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).

NO 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).

BAD FAITH

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).

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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark as it fully incorporates it. It is

well established that a domain name that wholly incorporates a trademark may be confusingly similar to such trademark for purposes of the Policy despite the addition of generic terms, such as "mobiles", which in this case can be argued that it is even enhancing the confusing similarity since the Complainant provides inter alia comparison services for mobile companies.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. Panels tend to assess the relevant circumstances for this element in the present, and without prejudice to the Complainant's duty to establish also the third element of paragraph 4(a)(iii) of the Policy. Since the Complainant made out a prima facie case that the Respondent lacks rights or legitimate interests and the Respondent did not deny these assertions in any substantive way, the latter failed to prove any rights or legitimate interests in the disputed domain name. Consequently, the Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy.

3.1 The Panel is also satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademark as the circumstances of the case, i.e. Complainant's and Respondent's location and the particular use of the disputed domain name, lead - on a balance of probabilities - to this conclusion.

3.2 Furthermore, the Panel accepts the Complainant's contentions that the disputed domain name has been used in bad faith, by intentionally attracting, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of the website.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. USWITCHMOBILES.COM: Transferred

PANELLISTS

Name	Stefania-Despoina Efstathiou, LL.M. mult.
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DATE OF PANEL DECISION 2022-05-12

Publish the Decision
