

Decision for dispute CAC-UDRP-104445

Case number	CAC-UDRP-104445
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Time of filing	2022-04-20 09:25:18
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Domain names	BRITUSWITCH.COM
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Case administrator

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

Organization	uSwitch Limited
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Complainant representative

Organization	Thomsen Trampedach GmbH
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Respondent

Name	Nouman Malik
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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 is the proprietor of United Kingdom trademark USWITCH, registered on August 23, 2002 under number UK00002230283.

FACTUAL BACKGROUND

The Complainant, Uswitch Limited, is a UK company first founded in 2000. Throughout its 22-year existence, the Complainant has used the USWITCH brand to promote a price comparison and switching service allowing consumers to compare prices for a range of energy, personal finance, insurance and communication services and to switch between providers. The Complainant's business is primarily conducted via their official website at <https://www.uswitch.com/>, first registered in 1999. The disputed domain name was registered on December 14, 2019. Since then, the domain name has apparently been used to display a website purporting to offer consultancy services to businesses, namely price comparison services in utilities and other sectors.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that:

1. The disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant states that the disputed domain name includes the Complainant's trademark in its entirety with the addition of the term "BRIT", which, given the nature of the content displayed at the disputed domain name (namely the website of a company offering consultancy services relating to utility comparisons to a UK audience), is to be seen as a reference to Britain as a geographic region.

Further, the Complainant asserts that the inclusion of a non-distinctive geographical term does not prevent a domain name from being found to be confusingly similar to a trademark in which a complainant has rights.

2. The Respondent does not have any rights or legitimate interest in the disputed domain name.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The activities undertaken through the use of the disputed domain name, i.e. offering business consulting services involving price comparisons in the gas, energy, water, telecoms and broadband sectors to UK clients, fall squarely within the range of services for which the Complainant's trademark is registered in Nice Classes 35 and 36. The marketing of such services under the disputed domain name and under a website header containing "Uswitch" is thus a prima facie infringement of the Complainant's trademark under Section 10(1) of the UK's Trade Marks Act 1994. Consequently, the Complainant submits that this does not qualify as a bona fide use capable of establishing a right or legitimate interest in the domain name to the benefit of the Respondent.

The Complainant further states that owing to the fact that the Complainant's use of the USWITCH brand predates the registration of the disputed domain by 17 years, and given that the Respondent uses the disputed domain to promote services substantially identical to those offered by the Complainant under its well-known USWITCH trademark, it is, on the balance of probabilities, more likely than not that the Respondent was aware of the Complainant's business and trademark upon registration of the disputed domain. As a result, the infringement committed by the use of the disputed domain name in a confusing manner is clearly deliberate and cannot be considered a bona fide offering of goods or services.

Finally, the Complainant underlines that while the Respondent appears to have a business registration in the name of Brit U Switch Ltd, that company was first incorporated at around the same time as the registration of the disputed domain name. The Complainant's rights in their trademark predate the creation of the company by 17 years, and it is more likely than not that the name chosen for the company is intended to ride on the coattails of the Complainant's reputation. That this is indeed the case is suggested by the fact that the website displayed at the disputed domain name does not use the company name as registered, i.e. "Brit U Switch", but rather as "Brit Uswitch", thereby intentionally drawing a link between the website and the Complainant's well-known price comparison brand.

3. The disputed domain name has been registered and is being used in bad faith.

The Complainant submits that the disputed domain name was registered and is currently used in bad faith.

The Complainant contends that, given the distinctiveness of the Complainant's trademark, its reputation, and the complete overlap between the intended use of the disputed domain name and the Complainant's business activities carried out under the USWITCH brand, it is inconceivable that the Respondent would not have been aware of the Complainant and of their USWITCH trademark when registering the disputed domain name.

The Complainant further claims that by choosing to include the USWITCH trademark in the disputed domain name, and by using the disputed domain name for the purposes of promoting a competing financial advice service, the Respondent has derived an undue benefit from the reputation enjoyed by the USWITCH brand among UK consumers, who may well assume that the disputed domain name hosts a venture affiliated with the Complainant. As such, the use made of the disputed domain name

is well-described by Paragraph 4(b) of the Policy, which specifies that bad faith registration and use may be found where “by using the domain name(s), the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent’s web site 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 web site or location or of a product or service on the Respondent’s web site or location.”

The Respondent also failed to respond to the Complainant’s representative’s cease and desist letter.

RESPONDENT:

In his very short response, the Respondent affirmed that Brit U Switch is a company which operates in Pakistan, that there was no intention to confuse customers or to take any other companies’ customers. The Respondent said (presumably referring to the registration of the disputed domain name) that it was a misunderstanding that had been done in error. The Respondent further stated that he understands the Complainant’s concern, and that for this reason he would cease all activities under the disputed domain name immediately.

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

A) Confusing similarity

The disputed domain name contains the Complainant’s registered USWITCH trademark in its entirety with the addition of the term “BRIT”.
The Panel agrees with the Complainant’s assertion that the inclusion of this term (here perceived as a geographical term) does not prevent a domain name from being found to be confusingly similar to a trademark in which a complainant has rights.

B) Lack of legitimate rights or interests

The disputed domain name is a distinctive, non-descriptive name. It is unlikely that the Respondent registered the disputed domain name without having the Complainant firmly in mind. The Complainant’s assertions are sufficient to constitute a prima facie demonstration of the absence of rights or legitimate interests in the disputed domain name on the part of the Respondent. The burden of evidence therefore shifts to the Respondent to show, using tangible evidence, that it does have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so. In fact, although in its short response the Respondent affirmed that Brit U Switch is a company which operates in Pakistan, he did not give any proof of this or of being linked to Pakistan, nor did he claim to have any rights or legitimate interests (deriving from this company’s name) in

the disputed domain name. On the contrary, the Respondent implicitly recognized the Complainant's rights and affirmed he would immediately stop all activities under the disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C) Registered or Used in Bad Faith

Owing to the distinctiveness of the Complainant's trademark and the fact that the Respondent uses the disputed domain name to promote services substantially identical to those offered by the Complainant under its trademark, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark, and so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant's trademark when registering the disputed domain name.

The Panel further accepts the Complainant's unchallenged assertion that the Respondent registered the disputed domain name with the aim of intentionally benefiting from consumer confusion arising from the inclusion of the USWITCH trademark in the domain name and in the website content.

The Panel also sees a lack of legitimate interests and an inference of bad faith in the Respondent's silence following the Complainant's cease and desist letter.

Finally, but importantly, the Respondent has not denied any of the assertions made by the Complainant in this proceeding; on the contrary he has implicitly recognized the Complainant's rights and affirmed that he would immediately stop the use of the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **BRITUSWITCH.COM**: Transferred

PANELLISTS

Name	Dr. Fabrizio Bedarida
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DATE OF PANEL DECISION 2022-05-26

Publish the Decision