

Decision for dispute CAC-UDRP-104394

Case number	CAC-UDRP-104394
Time of filing	2022-04-06 10:15:47
Domain names	essaysharks.company

Case administrator

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

Organization	FrogProg Limited
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Respondent

Organization	Marina Korshunova
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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 owner of the following trademark registrations for the sign "ESSAYSHARK" (the "ESSAYSHARK trademark"):

- the European Union trademark ESSAYSHARK with registration No. 014969083, registered on 26 May 2016 for services in International Classes 41 and 42;
- the United States trademark ESSAYSHARK with registration No. 5021885, registered on 16 August 2016 for services in International Class 41, with first use in commerce on 4 October 2011; and
- the United States trademark ESSAYSHARK with registration No. 5021887, registered on 16 August 2016 for services in International Class 41, with first use in commerce on 4 October 2011.

FACTUAL BACKGROUND

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

The Complainant offers essay writing services, which it offers online through the domain name <essayshark.com> registered on 13 November 2009.

The Respondent registered the disputed domain name on 10 May 2018. It resolves to a website that offers services identical to the services offered by the Complainant.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the disputed domain name is confusingly similar to its ESSAYSHARK trademark, as it reproduces this trademark with the addition of the letter "s", which does not significantly affect the appearance or pronunciation of the disputed domain name and does not prevent a finding of confusing similarity with the Complainant's trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because there is no relationship between the Parties and the Respondent is not commonly known by the disputed domain name. The Complainant adds that the Respondent is not making any bona fide offering of goods or services through the disputed domain name or carrying out a legitimate non-commercial or fair use of it. Rather, the Respondent uses the disputed domain name to mislead Internet users that there is an association between Parties.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It submits that the Respondent uses the disputed domain name for a website that offers services that coincide with the services offered by the Complainant. According to the Complainant, the Respondent thus targets the Complainant and intentionally attempts to disrupt the Complainant's business by diverting Internet users who are searching for the Complainant's product and attracting them, for commercial gain, to the Respondent's website by creating a likelihood of confusion with the Complainant's ESSAYSHARK trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on it.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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.

Language of the proceeding

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement,

subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant requests that the proceeding is carried out in English. It points out that the disputed domain name consists of the English words “essay”, “sharks” and “company”, and resolves to a website that is solely in English. The Complainant adds that the Respondent’s website provides customer support numbers in the United States, the United Kingdom and Australia and the location of the office is in New York, the United States.

The Respondent has not objected to the Complainant’s request on the language of the proceeding and has not expressed any opinion on the issue. As submitted by the Complainant, the disputed domain name consists of three English words and resolves to an English language website that indicates contact details in the United States, the United Kingdom and Australia. These circumstances support a conclusion that the Respondent understands English and would not be disadvantaged if the language of the proceeding is English.

Neither of the Parties has brought forward any arguments that using the English language in this proceeding would not be fair and efficient.

In view of the above, and in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English.

PRINCIPAL REASONS FOR THE DECISION

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ...”

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the ESSAYSHARK trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.company” gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence “essaysharks”, which reproduces the

ESSAYSHARK trademark entirely with the addition of the letter “s”. The addition of this non-distinctive element has a low effect on the overall impression made by the disputed domain name, in which the ESSAYSHARK trademark is easily distinguishable. As discussed in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Overview 3.0”), in cases where a domain name incorporates the entirety of a trademark, it will normally be considered confusingly similar to it for purposes of UDRP standing.

Taking all the above into account, the Panel finds that the disputed domain name is confusingly similar to the ESSAYSHARK trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because there is no affiliation between the Parties and Respondent is not commonly known under the disputed domain name. The Complainant also points out that the disputed domain name resolves to a website that offers services identical to the services of the Complainant. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided an explanation of the reasons why it has registered the disputed domain name.

In the Panel’s view, the circumstances of this case do not contradict the prima facie case made by the Complainant and do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It is confusingly similar to the Complainant’s ESSAYSHARK trademark, and the evidence in the case shows that the services offered through the associated website are indeed identical to the services of the Complainant. The website contains no disclaimer for the lack of relationship with the Complainant, but displays the copyright notice “Copyright Essayshark 2020”. The above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the ESSAYSHARK trademark, has registered the disputed domain name targeting this trademark in an attempt to exploit its goodwill by confusing and attracting Internet users to its website who may believe that the disputed domain name is affiliated to the Complainant, to offer them identical services for commercial gain.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The registration of the Complainant's ESSAYSHARK trademark predates the registration date of the disputed domain name, which reproduces this trademark entirely with the addition of a single letter that is difficult to notice. This may lead Internet users to believe that the disputed domain name and the website to which it resolves are affiliated to the Complainant. The Respondent's website offers identical services to those of the Complainant and contains no disclaimer but includes a copyright notice that reproduces the Complainant's trademark. The Panel is therefore of the view that the Respondent is more likely to have registered and used the disputed domain name with knowledge of the Complainant's trademark and with the intention of taking advantage of its goodwill by impersonating the Complainant and diverting the Complainant's customers to its website for commercial gain.

This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. ESSAYSHARKS.COMPANY: Transferred

PANELLISTS

Name	Assen Alexiev
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DATE OF PANEL DECISION	2022-06-06
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Publish the Decision