

Decision for dispute CAC-UDRP-104559

Case number CAC-UDRP-104559

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Domain names sampo.finance

Case administrator

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

Complainant

Organization Sampo Oyj

Complainant representative

Organization Berggren Oy

Respondent

Organization Alexander Alekseev, Sampo

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

In this proceeding the Complainant relies on the following trademarks with the "SAMPO" word element:

- the International trademark registration "SAMPO" (figurative: word plus device) No. 753790, registered on March 21, 2001;
- the EU trademark registration "SAMPO GROUP" (figurative: word plus device) No. 018238904, registered on September 18, 2020;
- the EU trademark registration "SAMPO" (word) No. 018004699, registered on May 10, 2019;
- the EU trademark registration "SAMPO" (figurative: word plus device) No. 002136687, registered on February 21, 2003;
- the Finnish trademark registration "SAMPO" (figurative: word plus device) No. 223848, registered on May 31, 2002; and
- the Finnish trademark registration "SAMPO-YHTIÖT" (figurative: word plus device) No.121120, registered on May 11, 1983.

The Complainant's trademarks cited above are protected for certain services in class 36 such as "insurance; financial affairs; monetary affairs" and some are also protected for certain services in class 35.

The Complainant also refers to its other trademark registrations with the "SAMPO" word element in several different countries, including Russia and provides a list of "SAMPO" trademarks (without providing printouts) as a separate annex.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS.

The Complainant is a Finnish public company and a parent company of the Sampo Group. Complainant's shares have been listed on Nasdaq Helsinki (previously the Helsinki Stock Exchange) since 1988.

Sampo Group operates in the financial and insurance sector and employs professionals of various fields, such as financial specialists, mathematicians, IT developers, investment managers, legal counsels, accountants and sales consultants, as well as people from various other professions. The Complainant states that Sampo Group employs approximately 13,000 people. The Complainant's office is located in Helsinki and it employs approximately 50 people and it also has a branch office in Stockholm.

The Respondent has registered the disputed domain name on October 22, 2021. The disputed domain name directs to a website that contains information related to investing in cryptocurrencies.

The Complaint alleges that the services provided by the Respondent are within the same and similar range of financial services provided under Complainant's registered trademarks.

The website by the disputed domain name impersonates the Complainant since the disputed domain comprises entirely of Complainant's company name and the main trademark.

The Complainant also contends that the impersonation is evident due to the very similar logo and the similar bluish colour palette used on the website and the lack of available contact details.

The Complaint owns a number of trademarks with the "SAMPO" word element including the ones referred to above and notes that they predate the registration date of the disputed domain name.

The Complainant claims that it has been using the "SAMPO" name since its foundation in 1909 and states that the SAMPO trademarks are protected within Europe in over 20 countries for especially financial and insurance services.

The Complainant also provides evidence of registration of its business name in Finland.

The Complainant claims that the disputed domain name is identical to its trademark or at least confusingly similar.

The <.finance> suffix is a standard registration requirement and as such is disregarded under the first element analysis.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME.

The submissions of the Complainant on the second element can be summarized as follows.

According to the searches conducted by the Complainant on the Internet and in the trademark databases, the Respondent does not have any rights preceding those of the Complainant to the name "SAMPO" or to the disputed domain name. The Respondent is neither affiliated with the Complainant nor authorized by it in any way to use the "SAMPO" mark. The Complainant does not carry out any activity for, nor has any business with the Respondent.

As a result of the Complainant's extensive earlier trademark registrations with respect to the classes 35 and 36, no one else has a right to register or use "SAMPO" trademark or confusingly similar marks or domain names, especially in connection with financial and insurance services.

The Respondent is not commonly known by the disputed domain name and its use is neither non-commercial nor fair use. The website by the disputed domain name presents information as if it was the Complainant's site, or at least the Respondent takes advantage of the Complainant's renown mark in the field of financial and insurance services.

The Respondent is intentionally trying to gain commercial monetary profit from the use and registration of the disputed domain name and is intentionally trying to benefit from the Complainant's registered well-known brand, as well as to cause detriment and damage to the Complainant's well-known trademark SAMPO.

The disputed domain name being identical to the Complainant's trademark carries as such a high risk of implied affiliation.

The Complainant has not granted anyone else any rights or license to use the name "SAMPO". The use and registration of the disputed domain name has not been authorized by the Complainant or its group companies.

Therefore, the Complainant claims the Respondent has no rights or legitimate interest in respect of the disputed domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH.

In respect of the bad faith element, the Complainant alleges the following.

The disputed domain name is used to attract Internet users to the web site for commercial gain or that the domain was registered primarily for the purpose of disrupting the business of a competitor.

According to the Complainant, the purpose of the registration and use of the disputed domain name by the Respondent, considering the facts and circumstances of the case, was the intention to attract, for commercial gain, Internet users to the Respondent's web site creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, and endorsement of the Respondent's website.

The Complainant alleges that the Respondent seems to be doing business in the financial sector and is a potential competitor of the Complainant.

This also confirms Respondent's intent on taking advantage of the Complainant's well-known brand in the same field.

The Complainant contends that the Respondent has been well aware of the Complainant's business in general as well as the existing company name, trademark rights and domain names.

In the Complainant's opinion, the Respondent has, with high likelihood, known the identity of the Complainant and had intent to target its rights for commercial purposes by registering the disputed domain name.

This is evident from the use of the "SAMPO" trademark on the website by the disputed domain name.

The logo used on the website very closely resembles that of included in the Complainant's registered trademarks.

Speaking of the Respondent's intent, the Complainant refers to the "objective test" and even if it was not the Respondent's original intention to cause harm to the Complainant and its trademarks, the consequences of the Respondent's actions have resulted in doing so and have prevented Complainant from reflecting its "SAMPO" trademark in a corresponding domain name.

The Complainant also contends that the chosen gTLD (<.finance>) has been purposefully chosen referring to the Complainant's area of business and this confirms bad faith.

The Complainant further alleges that the Respondent could also have easily checked general online databases to see the existence of Complainant's prior rights.

The Complaint adds that the Respondent has taken active steps to hide its identity by using a privacy service and that the website by the disputed domain name lacks professional quality. There are several parts on the Respondent's website depicting only non-understandable language that relates probably to Latin.

Further, there is no contact information available on the website. The deliberate concealment of identity and contact information indicate bad faith of the Respondent.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

In the view of the Panel, taking into account findings in respect of bad faith, there is no need to consider this element for the purpose of this proceeding.

BAD FAITH

The Complainant has not, 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. Identical or confusingly similar with Complainant's trademark

The Complainant owns various trademarks with the "SAMPO" verbal element.

As confirmed by "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition" ("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The disputed domain name fully incorporates the "SAMPO" word trademark of the Complainant (the EU trademark No. 018004699) and the "SAMPO" word element of the other marks.

As stated in WIPO Overview 3.0 "It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name... While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing." (see par.1.7).

The "SAMPO" mark (word element) is fully incorporated in the disputed domain name.

The Complainant's mark is clearly recognizable within the disputed domain name as there is both visual and phonetic similarity between the disputed domain name and the "SAMPO" trademark and the marks with the "SAMPO" word element.

The disputed domain name is confusingly similar with the trademarks of the Complainant and is identical with its word mark "SAMPO".

The gTLD suffix <".finance"> shall be disregarded under the confusing similarity test as it does not change the overall perception of the disputed domain name.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

In light of the Panel's finding in respect of the third element of UDRP and for the sake of speed and efficiency of this proceeding, it is unnecessary for the Panel to address the issue of the Respondent's rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

These circumstances are non-exhaustive and other factors can also be considered in deciding about the bad faith element.

Some of such factors are:

- (i) the nature of the domain name;
- (ii) the content of any website to which the domain name directs;
- (iii) other indicia generally suggesting that the respondent had somehow targeted the complainant (see par. 3.2.1 of WIPO Overview 3.0).

It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see par. 3.1 of WIPO Overview 3.0).

Complaints alleging the types of conduct described in UDRP paragraph 4(b) should be supported by arguments and available evidence. Even in cases of respondent default, panels have held that wholly unsupported conclusory allegations may not be sufficient to support a complainant's case.

Panels have been prepared in appropriate cases to draw inferences concerning a respondent's (bad faith) intent from the relevant facts and circumstances (see par. 3.1 of WIPO Overview 3.0). Targeting of the complainant by the respondent is necessary in establishing bad faith under UDRP.

The Complainant made a number of statements and assertions in this dispute in respect of the bad faith element.

The Complainant specifically referred to the two bad faith scenarios:

- 1) Registration of the disputed domain name primarily for the purpose of disrupting the business of a competitor; and
- 2) Use of the disputed domain name with the intention to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, and endorsement of the Respondent's website.

The Complainant refers to its "SAMPO" marks as "well-known" and "renown" and claims that the Respondent was aware of its "SAMPO" marks and intentionally targeted the Complainant. The Complainant alleges that since the Respondent offers services of investment in cryptocurrencies it is a competitor of the Complainant and takes advantage of the well-known and respected brand of the Complainant.

The Panel first notes, that the Complainant did not provide any proof of the well-known status of its trademarks.

The Complainant provided the following materials in its annexes:

- the complaint;
- the whois database information in respect of the disputed domain name;
- printouts from the trademarks' database and a list of Complainant's trademarks;
- confirmation of Complainant's company registration;
- a list of Complainant's domain names; and
- screenshots from the Respondent's website.

Nowhere in the annexes was there any information that could confirm popularity and/or well-known character of the "SAMPO" trademarks and their use in relation to specific services, e.g. financial services and services relating to cryptocurrency investments (e.g. publications, media articles and press-releases, awards, etc.).

A mere fact that the marks of the Complainant are registered in various jurisdictions does not automatically make them famous or well-known.

This has been confirmed by previous UDRP panels, see e.g. CAC Case No.104070 ("It might be the case that the trademarks are in fact "well-known" or "famous" but the Complaint has the obligation to formulate such claim in a convincing manner and bring the evidence to support the allegation"), CAC Case No. 103929 ("In a UDRP proceeding, a Complainant is required to prove its allegations even if the Respondent fails to submit a response. Therefore, for the purpose of this decision, the Panel cannot consider the trademark as one enjoying international reputation") and CAC Case No.104395 ("The Complainant asserts that its trademark is well-known. However, the Complainant did not provide evidence to support such a claim pertaining to the reputation of its trademark").

Under paragraph 10(a) of the Rules the Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and the Rules and the Panel shall be able to independently visit the Internet in order to obtain additional information.

The Panel has, therefore, conducted an Internet search of the word "SAMPO".

According to Panel's research, the word "SAMPO" has a meaning in Finnish mythology and refers to a magical device or object described in many different ways and/or a mysterious object often referred to in the mythological songs of the Finns, most likely a cosmological pillar (according to "WIKIPEDIA" and "Britannica").

This word is also associated with the epic Finnish poem "Kalevala" and "SAMPO" is a Finnish first name and is a surname.

The Complainant appears to be one of the users of the word "SAMPO" and this word is also used by a number of other businesses including businesses in Russia.

Therefore, while the Complainant has indeed a number of trademarks with the "SAMPO" word element it cannot be said that "SAMPO" is associated only or primarily with the Complainant.

Second, while the Complainant claims that the Respondent offers competing services, the Complainant did not provide any evidence of its activity in relation to cryptocurrencies.

From both the screenshots of the website by the disputed domain name provided by the Complainant and Panel's own visit to the website the Respondent appears to be offering services relating to cryptocurrencies.

The website also offers "SAMPO token". Dealing with cryptocurrencies and offering of tokens is a rather narrow field of activity. While in a broad sense it can be seen as a part of financial services, it represents a very specific area of business nowadays.

The Complainant, on the other hand, seems to be mainly engaged in insurance, at least according to the information discovered by the Panel (since the Complainant did not provide any materials regarding its actual scope of business in the annexes and did not substantiate what kind of financial services it actually provides).

Any financial services of the Complainant appear to be ancillary and secondary to its insurance activities. There is no proof of Complainant's activity in the financial sector in relation to cryptocurrencies and digital tokens.

Therefore, the Panel is not persuaded that the Respondent can be seen as a competitor of the Complainant in these circumstances for the purpose of UDRP as was envisaged by 4 (b) (iii) and that the registration was done "primarily" to disrupt Complainant's business.

Third, the Complaint alleges targeting inter alia by saying that the logo used by the Respondent on the website very closely resembles the logo that is a part of the Complainant's trademarks and alleges use of similar colours.

The Panel disagrees. The logo used by the Respondent, in Panel's view, is not similar with the logo employed of the Complainant and the colour scheme of the Respondent is different from the colours used by the Complainant on its website and in its trademarks.

Overall look and feel of the two websites are different and, in the Panel's view, there is no resemblance.

The Complainant also alleges that "as a result of the Complainant's extensive earlier trademark registrations with respect to the trademark classes 35 and 36, no one else has a right to register or use "SAMPO" trademark or confusingly similar trademarks or domains, especially in connection with financial and insurance services".

This claim is somewhat exaggerated and does not fit the spirit of UDRP and the intent of the creators of UDRP.

UDRP was designed to deal only with cases of abusive registration of domain names as demonstrated by the Final Report of the WIPO Internet Domain Name Process, April 30, 1999 ("WIPO First Domain Name Process"). As stated in par. 169 of the WIPO First Domain Name Process:

"It is recommended that the scope of the administrative procedure be limited to the abusive registration of domain names..".

Par. 172 of the WIPO First Domain Name Process states: "The cumulative conditions of the first paragraph of the definition make it clear that the behaviour of innocent or good faith domain name registrants is not to be considered abusive".

This also means that UDRP is not designed to deal with trademark infringement cases per se and solve all trademark related disputes. Its scope is rather narrow.

What the Complainant seems to argue in this case is a trademark infringement by the Respondent. However, UDRP is not a proper mechanism to deal with trademark infringement cases as such (in the absence of proof of abusing registration and use of a domain name) and previous UDRP panels highlighted this, see e.g. "Force Therapeutics, LLC v. Patricia Franklin, University of Massachusetts Medical School", WIPO Case No. D2017-2070 ("In any event, the Policy is directed to determining abusive domain name registration and use. This involves a more limited assessment than trademark infringement").

The Complainant suggests that the Respondent was "well aware" of its trademarks and intended to target the Complainant. However, no such proof has been provided to the Panel and the Panel does not see any such evidence from the arguments, facts of the case and facts discovered by Panel's own research.

Speaking of the Respondent's intent, the Complainant also refers to the "objective test" and even if it was not the Respondent's original intention to cause harm to the Complainant and its trademarks, the consequences of the Respondent's actions have resulted in doing so and have prevented Complainant from reflecting its "SAMPO" trademark in a corresponding domain name.

However, in the case that illustrates the point above, the Panel also noted that this objective test requires "knowledge of the mark at the time of registration" (see "Paule Ka v. Paula Korenek", WIPO Case No. D2003-0453).

The Complainant fails to prove such knowledge in this dispute.

As pointed out by one of the earlier UDRP panels: "for that bad faith to be present, the cybersquatter must have actual knowledge of the existence of the complainant, the trade mark owner. If the registrant is unaware of the existence of the trade mark owner, how can he sensibly be regarded as having any bad faith intentions directed at the complainant? If the existence of a trade mark registration was sufficient to give the Respondent knowledge, thousands of innocent domain name registrants would, in the view of the Panel, be brought into the frame quite wrongly" (see "The Way International, Inc. v. Diamond Peters", WIPO Case No. D2003-0264, see also "Advanced Drivers Education Products and Training, Inc v. MDNH, Inc. (Marchex)", Forum, FA0509000567039: "If Complainant's position were adopted, it would essentially establish a per se rule of bad faith any time a domain name is identical or similar to a previously-registered trademark, since constructive notice could be found in every such case. Such a result would be inconsistent with both the letter and the spirit of the policy, which requires actual bad faith").

The Respondent is located in Russia and while the Complainant has trademarks in Russia, it did not furnish any prove of their use in Russia, popularity and reputation.

The Complainant claims its main activities are in Finland, Nordic states and the Baltic states. Even though all these states are not far from Russia, there is still no evidence of Complainant's actual activities in Russia under the "SAMPO" mark and

any activities of the Complainant in the field of Respondent's use of the disputed domain name.

The website by the disputed domain name does not seem to be related to the Complainant, Complainant's main commercial activity (insurance and related services) and offers services related to cryptocurrencies and digital tokens.

The website by the disputed domain name is not similar to the Complainant's main website in terms of its "look and feel" and design.

The Complainant does not seem to be dealing with cryptocurrencies and digital tokens, at least no such proof was provided by the Complainant or is available otherwise.

The website by the disputed domain name may not be perfect and the Complainant noted some of its limitations.

However, it appears to be sufficiently developed, it describes services offered by the Respondent and his activity and contains some links (i.e. links to exchange platforms where "SAMPO" token can be bought).

It is not for the Panel to assess whether the website by the disputed domain name is 100 % legit and whether any actual commercial activity is going on (e.g. whether "SAMPO" token is a real one or a fake or arbitrary one), if, at the first appearance, it is active and contains sufficient information and a clear description of the project and is different from the Complainant's activities and Complainant's own website.

The Panel cannot accept Complainant's argument that the Respondent was "well aware" of the "SAMPO" marks when he registered the disputed domain name.

The Complainant seems to suggest that its marks are so well-known that the Respondent could not have ignored them and should have been aware of the marks when he registered the disputed domain name. However, this is not confirmed by facts and evidence in this case.

As stated before, examples of bad faith are not exhaustive and other factors and circumstances may indicate bad faith even if Respondent's conduct does not strictly fall under any of the scenarios described in 4 (b) of the UDRP, provided that a respondent takes unfair advantage of or otherwise abuses a complainant's mark and had complainant's trademark in mind while registering the domain name.

However, no such evidence is available in this proceeding.

The Panel does not see any evidence in this proceeding indicating that the Respondent intended to take unfair advantage of the Complainant's trademarks in any way or somehow had the Complainant in mind when he registered the disputed domain name.

Even when a disputed domain name is identical to a trademark, this per se cannot be seen as proof of bad faith in the absence of indicia of targeting (e.g. evidence of well-known character of the mark).

Previous UDRP decisions confirm that in the absence of targeting, there can be no bad faith of the respondent, see e.g.: "BlankPage AG v. Waleed Altywaijri", WIPO Case No. D2012-2189 ("Is there anything to suggest that the Respondent was even aware of the existence of the Complainant when he registered the Domain Name? Again, the Panel has no information on the topic"); CAC Case No. 102809 ("Although no Response has been filed, the burden of proof rests with the Complainant..."), CAC Case No. 104070 ("Complainant mentioned that Respondent is parasitizing with the disputed domain name on its reputation and its well-known among the consumers, however, there is no evidence about the famous or well-known status of Complainant's trademarks") and CAC Case No. 104395 ("In the present proceeding, there is no compelling evidence the Respondent intended to take unfair advantage of the Complainant's trademarks in any way or somehow had the Complainant in mind when he registered the disputed domain name").

Whether the Complainant has a valid trademark infringement claim based on its trademark registrations covering inter alia services in class 36 even in the absence of targeting by the Respondent, is not a matter for this Panel to consider.

Such issues shall be decided in courts and not in UDRP proceeding.

Based on the above, the Panel finds in this dispute there is no evidence of bad faith registration and use, in particular taking into account:

(i) the nature of the disputed domain name and the trademarks of the Complainant – despite the fact that the Complainant has numerous registrations in various European states the word “SAMPO” is not associated exclusively or primarily with the Complainant and there is no proof of any reputation and popularity of Complainant’s trademarks, in particular their use and their popularity in the country of the Respondent;

(ii) the content of the website by the disputed domain name– there is no relation between the content of the website of the Respondent and the activities of the Complainant.

The Complainant did not provide any evidence that demonstrate its own crypto-related business activities and the main area of Complainant’s commercial activity appears to be insurance. There is also no similarity between the Complainant’s main website and the website by the disputed domain name. The Panel has not been provided with any evidence that would demonstrate that the Respondent is trying to impersonate the Complainant and no such evidence is available from the facts of the case; and

(iii) other indicia generally suggesting that the Respondent had somehow targeted the Complainant and had the Complainant in mind when he registered the disputed domain name – other indicia are absent in this proceeding and there is no proof of targeting.

It is the Complainant’s obligation to create a proper record to succeed.

There is no evidence that the Respondent was somehow aware of the Complainant and its trademarks. The chosen gTLD <.finance> is related to Respondent’s activity and does not indicate targeting per se of the Complainant, in particular taking into account that the main business of the Complainant appears to be insurance and no proof of use of marks of the Complainant in respect of financial services relating to cryptocurrencies was provided.

Targeting in UDRP must be evident either from the evidence provided by the Complainant or from the content of the website or other circumstances relating to use of the disputed domain name.

No bad faith inferences can be drawn in this case based either on the evidence provided or facts and circumstances available on the date of the decision.

Therefore, Panel holds that the third requirement of the Policy has not been satisfied and the complaint shall be denied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **SAMPO.FINANCE**: Remaining with the Respondent

PANELLISTS

Name	Igor Motsnyi / Mocni Konsalting doo
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DATE OF PANEL DECISION 2022-06-13

Publish the Decision
