

Decision for dispute CAC-UDRP-104676

Case number	CAC-UDRP-104676
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Time of filing	2022-06-28 09:11:15
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Domain names	altarea-gestion.com
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Case administrator

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

Organization	ALTAREA
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Marc Jouglas
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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 bases its Complaint of the following trademarks:

- ALTAREA (figurative), French registration No. 4706407, of 27 November 2020, claiming protection for services in classes 35, 36, 37, 41, 42 and 43;

- ALTAREA (word), international registration No. 907441, of 12 July 2006, designating Swiss, Monaco, Russia and Ukraine, and based on the European trademark registration No. 1148246, covering classes 35, 36, 37, 42 and 45.

The Complainant is also the owner of the domain name <altarea.com>, registered and used for its official website since 31 March 1999.

FACTUAL BACKGROUND

The Complainant is a French company founded in 1994. It is the leading property developer in France. The Complainant

operates in all real estate asset areas: residential, retail, offices, logistics, hotels, serviced residents, etc.

The Respondent in this case is a French individual, who however claims not to be involved in the registration of the disputed domain name, and that his identity has been stolen. In support of this statement, the Respondent has filed a Complaint with the local Police authorities. A copy of this Complainant has been filed in this UDRP procedure.

The disputed domain name was registered on 13 June 2022 and, at the time of the filing of the Complaint, redirected to a parking page.

PARTIES CONTENTIONS

Complainant

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's trademark because it incorporates this trademark entirely and the addition of the French word "gestion" cannot prevent a finding of confusing similarity.

The Complainant further maintains that the Respondent does not have any rights or legitimate interests in the disputed domain name for the following reasons.

First, the Respondent is not identified in the relevant Whois information as the disputed domain name, therefore the Respondent is not commonly known by the disputed domain name. Second, the Respondent is not known by the Complainant. The Respondent is not affiliated, nor authorized by the Complainant to register and use the Complainant's trademark as part of a domain name. The Respondent is not a Complainant's licensee and there are no business or other kind of relations between the Complainant and the Respondent. Furthermore, the disputed domain name resolves to a parking page indicating that the Respondent has not used the disputed domain name and has no demonstrable plan to use it.

With respect to registration and use of the disputed domain name in bad faith, the Complainant contends that its ALTAREA trademark is highly distinctive and enjoys reputation. Furthermore, the French trademark "gestion" added to the disputed domain name refers to the Complainant and its main business country (France). It is therefore reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark.

The disputed domain name is passively held at the time of the filing of the Complaint. Such passive holding does not prevent bad faith use of the disputed domain name in circumstances where the disputed domain name is identical to the Complainant's mark, where the Respondent has failed to submit a Response or otherwise to provide evidence of actual or contemplated good faith use, and where any good faith use of the disputed domain name is implausible.

Respondent

The Respondent first submitted one single statement as follows: "hi i am not using their brand name or anything else!" Subsequently, the Respondent, through his daughter, better explained that he was not the person who registered the disputed domain name and that "someone is impersonating him to perform some kind of fraudulent activity". The Respondent himself also submitted a letter explaining that shortly before being notified of this UDRP Complaint, he was approached by someone proposing very profitable investments, which he did not make, and that he believed that the theft of his identity is connected to this circumstance. The Respondent also attached a copy of the Complaint he had filed with the local Police Authority.

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 are met and there is no other reason why it would be inappropriate to provide a decision.

As mentioned above, the disputed domain name is in the name of an individual who denies any involvement in its registration. This individual, not only has informed in writing the CAC that he has never registered the disputed domain name, but he has also enclosed a Complaint that he filed with the local Police Authority to that effect. In view of this circumstance, the Panel accepts that the individual listed as Registrant of the disputed domain name in the relevant Whois is actually completely unrelated to it.

Although the Respondent has not expressly asked to redact his name from this Decision, the Panel finds it fair to avoid any reference to the Respondent's name in order to preserve his privacy and reputation. Accordingly, the Panel orders the CAC to redact the name of the Respondent from the published version of this Decision. For other cases dealing with the same issue see CAC Case No.103649, UMG Recordings, Inc. and Universal Music Group Holdings, Inc. vs. Data Redacted; Elkj p Nordic A/S v. Name Redacted, WIPO Case No. D2013-1285; Pestalozzi Attorneys-at-law Ltd v. Name Redacted, WIPO Case No. D2019-1345, etc.

PRINCIPAL REASONS FOR THE DECISION

1. Confusing similarity

The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's trademark ALTAREA as it includes it entirely followed by the term "gestion", which is the French translation of "management" and is a term related to the Complainant's activity. Previous UDRP panels have generally found that where the relevant trademark is recognizable within a disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. This general principle also applies in this case, where the Complainant's trademark is fully distinctive and recognizable within the disputed domain name, despite the addition of the word "gestion".

In light of the above, the Panel is satisfied that the first condition under the Policy is met.

2. No rights or legitimate Interests

As also confirmed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant states that it has no relationship with the Respondent and that it never licensed its ALTAREA trademark to the Respondent, nor authorised the Respondent to include its trademark in a domain name. Furthermore, the Respondent does not appear to have been commonly known by the disputed domain name. At the time of the filing of the Complaint, the disputed domain name resolved to a parking page. Therefore, there is no evidence in the file that before any notice of the dispute, the Respondent used or made 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.

In view of all the above, the Panel finds that the Complainant has discharged its burden of proof that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The burden of proof production now shifts to the Respondent to demonstrate that it owns rights or legitimate interests in the disputed domain name. The Respondent did not provide any argument or evidence in support of its rights or legitimate interests; instead, the Respondent denied any involvement in the registration of the disputed domain name.

In light of the above, the Panel is satisfied that also the second condition of the Policy is met.

3. Bad faith

In relation to bad faith, the Panel notes that the Complainant's trademark consists of a fanciful and distinctive term exclusively associated with the Complainant. The addition of the French word "gestion", which is related to the Complainant's activity, is another indication of the fact that the individual who registered the disputed domain name (and who is not the Respondent as mentioned above) had full knowledge of the Complainant and of its trademark and activity when it registered the disputed domain name.

With respect to use in bad faith, the disputed domain name was resolving to a parking page of the Registrar at the time of filing. The fact that the disputed domain name does not link to an active website cannot in itself preclude a finding of bad faith. In particular, the Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In the instant case, the disputed domain name is highly distinctive and uniquely associated to the Complainant. A quick search on the Google search engine performed by the Panel on the term "altarea" in accordance with the limited powers conferred to her pursuant to Paragraph 10 of the UDRP Rules, has shown that all the results refer to the Complainant. In addition, the Respondent in this proceeding is not the actual registrant of the disputed domain name as his identity and contact details have been stolen and used to hide the true identity of the real registrant. Furthermore, the Panel has ascertained that the current use of the disputed domain name has changed and that now the Registrar's parking page to which the disputed domain name led, contains pay-per-click links. Some kind of income presumably derives from each click on the sponsored links appearing on this parking page. The use of the domain name including a distinctive trademark belonging to a third party to resolve to a parking page containing pay-per-click links does not amount to a use of the disputed domain name in good faith.

For all the reasons described above, the Panel concludes that the disputed domain name has been registered and used to intentionally attempted to attract, for commercial gain, Internet users to the Registrant'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 Registrant's web site or location.

Therefore, the Panel finds that also the third and last condition under the Policy has been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ALTAREA-GESTION.COM**: Transferred

PANELLISTS

Name	Angelica Lodigiani
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DATE OF PANEL DECISION 2022-07-22

Publish the Decision
