

Decision for dispute CAC-UDRP-104712

Case number	CAC-UDRP-104712
Time of filing	2022-07-08 09:16:34
Domain names	altarea-gestion-immobilere.com

Case administrator

Organization	Denisa Bilík (CAC) (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

Organization	Above.com Domain Privacy
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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 registrant of the following trademarks:

- French trademark n° 4706407 "ALTAREA", registered on May 28, 2021, for goods and services in classes 35, 36, 37, 41, 42 and 43; and
- International trademark n° 907441 "ALTAREA", registered on July 12, 2006, for goods and services in classes 35, 36, 37, 42 and 45.

The disputed domain name was registered by the Respondent on February 2, 2022.

FACTUAL BACKGROUND

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

Founded in 1994, the Complainant is the leading property developer in France. The Complainant's group has developed unique real estate skills and development platform covering all classes of real estate assets (residential, retail, offices, logistics, hotels,

serviced residences, etc.).

The Complainant is the owner of several trademarks “ALTAREA”.

The Complainant also owns several domain names including the trademark ALTAREA, such as the domain name <altarea.com> registered and used for its official website since March 31, 1999.

The disputed domain name was registered on February 2, 2022 and redirects users to a parking page with commercial links.

The Complainant states that the disputed domain name is confusingly similar to its trademark ALTAREA because it incorporates the Complainant’s trademark. The addition of French terms “Gestion” and “Immobilere” is not sufficient to escape the finding that the domain name is confusingly similar to the trademark ALTAREA. It does not change the overall impression of the designation as being connected to the Complainant’s trademark ALTAREA. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

Furthermore, the Complainant contends that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The Respondent is not identified as the disputed domain name. The Respondent is not known by the Complainant. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that 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.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark ALTAREA, or apply for registration of the disputed domain name by the Complainant.

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.

Accordingly, Respondent has no rights or legitimate interests on the disputed domain name.

The Complainant states that the disputed domain name is confusingly similar to its trademark ALTAREA. The association of the trademark “ALTAREA” and the terms “gestion” and “immobilere” refer to the Complainant and its main business country (France). On those facts, given the distinctiveness of the Complainant’s trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant’s trademarks.

The disputed domain name redirects users to a parking page with commercial links. The Respondent’s use of the disputed domain name to redirect users to a webpage displaying pay-per-click links shows Respondent’s bad faith under Policy paragraph 4(b)(iii) and (iv). Notably, such usage is disruptive to Complainant’s business and demonstrates that Respondent is attempting to attract internet users for commercial gain by trading off Complainant’s trademark.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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

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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; 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.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "ALTAREA", identified in section "Identification of rights" above.

The Panel observes that the registration of the Complainant's trademark predates the registration of the disputed domain name.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

In the present case, the Panel considers that the disputed domain name is confusingly similar to the Complainant's "ALTAREA" trademark for the following reasons: (a) "ALTAREA", as observed by another panel (see CAC case No. 104676), is a fanciful and distinctive term exclusively associated with the Complainant; (b) the only difference between the "ALTAREA" trademark and the disputed domain name is that in the latter the terms "gestion" ("management" in French) and "immobilere" (clear misspelling of the word "immobilière" - "property" in French), separated by hyphens, has been added; (c) the fact of adding the words "gestion" and "immobilere", separated by hyphens, does not create any new word, or give the disputed domain name any distinctive meaning; and (d) the disputed domain name is composed by the Complainant's trademark, with the only addition, separated by hyphens, of a misspelling of the generic wording "gestion immobilière" ("property management" in French) which relates to the business field of the Complainant.

It is well established that where the relevant trademark is recognizable within the domain name, the addition of other non-

distinctive terms does not prevent a finding of confusing similarity (see, for example, WIPO case No. D2008-2002). In particular, other panels have considered the addition of descriptive words as likely to increase the possibility of confusion amongst consumers (see, for example, CAC case No. 101661). A clear misspelling of a generic term in a domain name does not prevent a finding of confusing similarity (see, for example, WIPO case No. D2022-0997).

It is well accepted that the hyphen is not relevant in the confusing similarity test (see, for example, WIPO case No. D2016-0676).

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or 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; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- it does not carry out any activity for, nor has any business with the Respondent;
- the Respondent is not identified in the Whois database as the disputed domain name;

- the Respondent is not known by the Complainant;
- the Respondent is not affiliated with nor authorized by the Complainant in any way;
- neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ALTAREA, or apply for registration of the disputed domain name;
- the disputed domain name resolves to a parking page.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, the disputed domain name redirects users to a parking page.

Taking into account that the Respondent is not identified as the disputed domain name, that the Respondent is not affiliated with nor authorized by the Complainant in any way, that the Complainant does not carry out any activity for, nor has any business with the Respondent, that the Complainant has not authorized or licensed the Respondent to use the disputed domain name or to apply for registration of it, that the disputed domain name redirects users to a parking page, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

- (i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or
- (ii) [the Respondent] [has] registered the [disputed] 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 [the Respondent] [has] engaged in a pattern of such conduct; or
- (iii) [the Respondent] [has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the [disputed] domain name, [the Respondent] [has] 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 Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

The Panel observes that it is well established that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative. Therefore, even where a complainant is not able to demonstrate the literal application of one of the above-mentioned scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant's trademark would also satisfy the complainant's burden.

Taking into account the distinctiveness of the word "ALTAREA", with the addition of a wording which relates to the Respondent's business field, the Panel agrees that it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "ALTAREA" when registering the disputed domain name. Other panels considered that knowledge of a corresponding mark at the time of the domain name's registration can suggest bad faith (see, for example, WIPO Case No. D2017-0100) and the Panel share this view.

Other panels considered the use of a privacy service which blocks disclosure of the identity of the actual underlying registrant as an indication of bad faith (see, for example, WIPO case No. D2021-1514). The Panel notes that in the present case the identity of the registrant has not been disclosed, and takes the view that in these circumstances this is an indication of bad faith.

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have filed a response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the "ALTAREA" trademark at the time of the disputed domain name's registration, that no response to the complaint has been filed, that the name of the registrant has not been disclosed, and the use of the disputed domain name redirecting users to a parking page, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	Michele Antonini
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DATE OF PANEL DECISION	2022-08-16
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Publish the Decision
