

Decision for dispute CAC-UDRP-104247

Case number CAC-UDRP-104247

Time of filing 2022-01-03 10:37:23

Domain names youessayshark.com

Case administrator

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

Complainant

Organization FrogProg Limited

Respondent

Name Kevin Kirui

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 owns the following trademark registrations for ESSAYSHARK that predate the registration of the disputed domain name:

- EU trademark number 014969083, registered on 26 May 2016 in classes 41 and 42;
- US trademark number 5021885, registered on 16 August 2016, in class 41; and
- US trademark number 5021887, registered on 16 August 2016, in class 41.

FACTUAL BACKGROUND

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

The Complainant provides on-line assistance services for academic writing and scientific research. This includes writing, rewriting, editing, proofreading and custom writing services for non-advertising purposes. The Complainant owns trademark registrations for ESSAYSHARK in the EU and in the USA that predate the registration of the disputed domain name. It operates the domain name essayshark.com, which was registered in November 2009.

The Respondent registered the disputed domain name on 4 September 2021 using a privacy protection service.

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

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 Respondent filed a non-compliant response asserting that the disputed domain name is neither identical nor confusingly similar to the protected mark, and has not been registered and used in bad faith.

The Respondent provided no explanation for those assertions and did not respond “specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent... to retain registration and use of the disputed domain name” as required by Paragraph 5(b)(i) of the Rules.

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

Paragraph 4 (a) of the Policy requires the Complainant to prove each of the following three elements:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and used in bad faith.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Complainant asserts that the disputed domain name is confusingly similar to its registered trademark ESSAYSHARK.

It is generally accepted that the addition of the top-level suffix, “.com” is a standard registration requirement. It does not add any distinctiveness to a domain name and can be disregarded when assessing whether the disputed domain name is confusingly similar to the Complainant’s trademark. (WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.)

The disputed domain name incorporates the Complainant’s trademark, ESSAYSHARK and adds the prefix “your”. The Complainant’s trademark is distinctive and the addition of the prefix “your” does not alter the overall impression that the disputed domain name is confusingly similar to the Complainant’s mark.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark ESSAYSHARK and that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent has no rights or legitimate interest in the disputed domain name and says that the Respondent:

- (i) is not related in any way with the Complainant nor has any business with him;
- (ii) is not commonly known by the disputed domain name;

(iii) is not using it in connection with a bona fide offering of goods or services nor a legitimate non-commercial or fair use;
(iv) will never be capable of using the disputed domain name for a legitimate purpose; and
(v) in using the disputed domain name in connection with websites that have the appearance very similar to the Complainant's website means members of the public will always assume that there is an association between Respondent and the Complainant and its trademark.

The Complainant has made out a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The burden of proof shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name.

The Respondent has provided no evidence to show that he has any rights or a legitimate interest in the disputed domain name. He is not commonly known by the disputed domain name and is not authorised to use the Complainant's trademark. He is using the disputed domain name in connection with a website offering services similar to, and in competition with, the Complainant's website and its activities. This is not bona fide offering of goods or services nor a legitimate non-commercial or fair use.

The Panel concludes that the Complainant has shown that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. REGISTERED AND BEING USED IN BAD FAITH

The Complainant asserts that the disputed domain name has been registered and is being used in bad faith and says that the Respondent:

- (i) used the Complainant's trademark ESSAYSHARK with the prefix "your" to deliberately misled Internet users;
- (ii) used the disputed domain name in connection with a website offering the same type of services as the Complainant;
- (iii) failed to respond to the Complainant's cease and desist letter and did not provide any good reason to justify this, which confirms the bad faith; and
- (iv) knew about the existence of the Complainant's website as it clearly used SEO technics to attract Complainant's traffic in the USA.

The disputed domain name is confusingly similar to the Complainant's trademark. The Complainant has used the name ESSAYSHARK since 2011 and its trademark registrations pre-date the registration of the disputed domain name.

The Respondent used a privacy shield to register the disputed domain name. He has used the disputed domain name in connection with a website offering services similar to those of the Complainant. He has failed to respond to a cease and desist letter sent to him by the Complainant. He has offered no explanation to justify his actions nor submitted any evidence of good faith registration and use.

Taking the above factors into account, the Panel concludes that the Respondent knew of the Complainant and its trademark when he registered the disputed domain name, and has used it in connection with a website for the purposes of attracting internet users for commercial gain by creating a likelihood of confusion with the Complainant and its mark.

The Panel finds that the disputed domain name was both registered and is being used in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. YOURESSAYSHARK.COM: Transferred

PANELLISTS

Name **Veronica Bailey**

DATE OF PANEL DECISION **2022-01-31**

Publish the Decision
