

Decision for dispute CAC-UDRP-104822

Case number CAC-UDRP-104822

Time of filing 2022-09-20 16:17:33

Domain names huawei-th.com

Case administrator

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

Complainant

Organization HUAWEI TECHNOLOGIES CO, LTD

Complainant representative

Organization cv SNB-REACT ua

Respondent

Name dstar dstar

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 registered trademark (among others): International registered trademark: HUAWEI, registered on December 4, 2000 under number 748648, for goods and services in Nice Classes 9, 35 and 42, and designated in respect of some 30 territories.

FACTUAL BACKGROUND

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

Founded in 1987, the Complainant is a leading global provider of information and communications technology (ICT) infrastructure and smart devices with approximately 197,000 employees. The Complainant operates in over 170 countries and regions, serving more than three billion people worldwide.

The Complainant owns various trademark registrations pertaining to the "HUAWEI" brand, including International Registered Trademark HUAWEI, registered on December 4, 2000 under number 748648, for goods and services in Nice Classes 9, 35 and 42, and designated in respect of some 30 territories. The Complainant's HUAWEI trademarks are distinctive, enjoy an international reputation, are well-known worldwide, and have been recognized as such in previous cases under the Policy.

The disputed domain name was created on June 14, 2022, being more than 20 years after the Complainant's trademark rights.

The disputed domain name incorporates the Complainant's HUAWEI trademark in its entirety, merely adding "-th". The term "th" is the standard diminutive of the country Thailand, and also its country code Top-Level Domain. The dash between the terms "HUAWEI" and "th" is of insufficient relevance for the purposes of the present proceeding, as it has no meaning more than a space marking between two terms. Such additions do not prevent a finding of confusing similarity, as the Complainant's trademark is clearly recognizable within the disputed domain name. The ".com" generic top-level domain ("gTLD") is added merely for technical reasons and may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name.

The Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name and is not making a bona fide offering of goods and services thereby. The Respondent is not the owner and/or licensee of any trademark registration corresponding to the disputed domain name and has no rights in the Complainant's HUAWEI trademark. There is no evidence that the Respondent is known by such a name in the course of trade. Furthermore, the Complainant's trademark is displayed on the website content of the disputed domain name together with the colours and aesthetics, font type and feel of the Complainant's main website. The Complainant has never authorized the Respondent to register and use its mark in the disputed domain name. In the absence of any license or permission from the Complainant to use its trademarks, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed.

Although the website associated with the disputed domain name has the appearance of an official site of the Complainant, the Complainant has given no permission for its use. The Respondent's use of the disputed domain name would not pass the OKI Data test (Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903) because it is clear that there is no real indication regarding the relationship between the Complainant and Respondent on the website corresponding to the disputed domain name. Use of the disputed domain name is not bona fide use if it serves as "bait" to attract customers to the Respondent's website.

The Complainant's representative sent notices requesting takedown to the Respondent, the disputed domain name's Registrar, the hosting provider and the domain name server provider asking for information regarding the Respondent, which were duly delivered. However, the Respondent did not come forward with any asserted rights or legitimate interests regarding the disputed domain name. The Panel is entitled to draw a negative inference from such default.

The disputed domain name has been registered and is being used in bad faith. The disputed domain name was registered to obtain a profit from or to exploit the Complainant's trademark. The nature of the disputed domain name, wholly incorporating the relevant mark plus a descriptive term, and the distinctiveness of the trademark at issue, are relevant to this inquiry.

The Respondent has no relationship with the Complainant, yet the website associated with the disputed domain name emulates a user panel login page of the Complainant, so that an Internet user could insert their credentials believing that this website is a genuine website of the Complainant, potentially putting their information at risk.

The Respondent's bad faith is demonstrated by its actual knowledge of Complainant's rights in its trademarks in connection with the registration of the disputed domain name. The Complainant holds trademark rights for HUAWEI since at least 2000 and is well-known in its field of activity and around the world. A simple trademark or even an Internet search at the time of registration of the disputed domain name would have revealed the Complainant's trademarks and presence in the worldwide market. Considering the use of the Respondent's website, the Respondent could not reasonably have been unaware of the Complainant's trademarks at the time of registration. The Respondent is using the Complainant's well-known trademarks in order to get Internet users on its website to obtain commercial gain from the false impression created of a potential affiliation and/or connection with the Complainant, its trademarks, or its products and services. This false impression is achieved by the full incorporation of the Complainant's trademark in the disputed domain name and in the content of the website.

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Considering the significant reputation associated with the Complainant's trademark, there is no conceivable legitimate use of the disputed domain name by the Respondent. Any use of the disputed domain name by the Respondent is likely to constitute passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's trademark rights.

The Respondent is using the disputed domain name to intentionally attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks, products and services, and this conduct additionally confirms that the Respondent has used 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

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

The Complainant has demonstrated that it has UDRP-relevant rights in its HUAWEI registered trademark by virtue of International Registered Trademark number 748648. The Complainant asserts that this is a figurative mark. Said mark consists exclusively of the word HUAWEI in a stylized font. Even if the mark is figurative in nature, the Panel finds that it is possible to sever the word element from any design or stylized elements for the purposes of the first element comparison exercise under the Policy (see, for example, section 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) on this topic).

The second level of the disputed domain name contains the Complainant’s HUAWEI trademark in its entirety, together with a dash or hyphen and the letters “th”. Neither the presence of the hyphen in the disputed domain name, nor the letters “th”, usually taken to be an abbreviation of the geographical designation “Thailand”, alter the fact that the Complainant’s HUAWEI mark is fully recognizable therein on a straightforward side-by-side comparison. It is the first and dominant element of the disputed domain name. The generic Top Level Domain in respect of the disputed domain name, namely “.com”, is typically disregarded for the purposes of the comparison under the first element analysis of the Policy. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s HUAWEI trademark.

With regard to the second element of the Policy, the Complainant submits that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant asserts that the Respondent is not commonly known by the disputed domain name and is not making a bona fide offering of goods and services thereby, adding that the Respondent is not the owner and/or licensee of any trademark registration corresponding to the disputed domain name and has no rights in the HUAWEI trademark. The Complainant notes that there is no evidence that the Respondent is known by the name “huawei” in the course of trade, showing also that the Complainant’s trademark is displayed on the website content of the disputed domain name together with the colours and aesthetics, font type and feel of the Complainant’s main website. The Complainant submits that it has never authorized the Respondent to register and use its mark in the disputed domain name and notes that in the absence of any license or permission from the Complainant to use its said trademark, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed. Insofar as the website associated with the disputed domain name has the appearance of an official site of the Complainant, the Complainant submits that it has given no permission for its use in this manner and asserts that such use would not pass the OKI Data test (Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903) because there is no real indication regarding the (non) relationship between the Complainant and Respondent shown on the corresponding website. The Panel finds that these submissions, taken together, are sufficient to constitute the requisite prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name (see, for example, section 2.1 of the WIPO Overview 3.0).

The Respondent has failed to rebut the Complainant’s said prima facie case in that it has not filed a Response in the administrative proceeding. The Panel has considered the possibility that the Respondent might be selling the Complainant’s genuine goods under the Complainant’s HUAWEI trademark, given that its website is entitled “Huawei Shop” and it uses the Complainant’s logo and distinctive figurative trademark. However, even if the Respondent had shown that it was selling the Complainant’s goods alone, it would have been unable to establish all of the requirements of the “OKI Data test” described by the Complainant (see: Oki Data Americas, Inc. v. ASD, Inc., supra). In particular, the Respondent would have had to establish that it was actually offering for sale only the trademarked goods, and to show that its website accurately and prominently disclosed its (lack of) relationship with the Complainant. There is no evidence that the Respondent is selling the Complainant’s genuine goods, and there is no accurate and

prominent disclosure of the Parties' lack of relationship displayed on the Complainant's screenshots of the website associated with the disputed domain name.

The Panel therefore considers that it is reasonable in all of the above the circumstances to make a finding that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel turns to the third element assessment, namely the question of registration and use in bad faith in respect of the disputed domain name. The Panel notes that the composition of the Second Level Domain of the disputed domain name is the Complainant's mark together with an abbreviated term for Thailand. The Panel also notes the Respondent's uncontradicted assertion that the website associated with the disputed domain name emulates a user panel login page of the Complainant, so that an Internet user could insert their credentials believing that this website is a genuine website of the Complainant, potentially putting their information at risk. The Panel also notes that the website associated with the disputed domain name features the Complainant's figurative trademark, used as a logo, and appears designed to suggest to Internet users that it is an official site of the Complainant. For that reason, the Panel accepts the Complainant's submission that the Respondent more likely than not had actual knowledge of Complainant's rights in its HUAWEI trademark at the point when the disputed domain name was registered. The Panel also accepts the Complainant's submission that, given the notoriety of such mark, the Respondent could not reasonably have been unaware of the Complainant's trademarks at the time of registration.

In all of these circumstances, and in the absence of any rebuttal from the Respondent, the Panel finds on the balance of probabilities that the Respondent is using the Complainant's trademark in order to create the false impression of an affiliation with the Complainant, its trademarks, and/or its products and services. The Panel also finds that the Respondent is using the disputed domain name to intentionally attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark, products and services. Accordingly, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. huawei-th.com: Transferred

PANELLISTS

Name	Andrew Lothian
-------------	-----------------------

DATE OF PANEL DECISION **2022-10-24**

Publish the Decision
