Decision for dispute CAC-UDRP-102878

Case number	CAC-UDRP-102878
Time of filing	2020-02-06 09:37:51
Domain names	glencorejobs.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Glencore International AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	Jomol jinu

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings the Panel is aware of which are pending or decided and which relate to the dispute domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns the trade mark GLENCORE as a word and figure mark in several classes in numerous of countries all over the world. In Australia it owns the trade mark GLENCORE, registration number 772161, which was registered on 30 March 1999.

FACTUAL BACKGROUND

The Complainant is one of the world's largest globally diversified natural resource companies. It is involved in the production, marketing and distribution of energy, agricultural and metal commodities. Its head office is in Switzerland and its subsidiaries have operations in numerous countries around the world. It has an active presence in Australia where the Respondent is located.

The Complainant owns trade marks registrations for GLENCORE that predate the registration of the disputed domain name.

The Complainant has registered a number of domain names containing the word GLENCORE, for example, <glencore.com>, created on 29 May 1996 and <glencore.us>, created on 19 April 2002. The Complainant's official global website is

<www.glencore.com> and its local website in Australia is <www.glencore.com.au>.
The Respondent registered the disputed domain name on 2 September 2019.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant asserts that the disputed domain name is confusingly similar to its registered trade mark: it incorporates its registered trade mark GLENCORE in its entirety and combines it with a generic term “jobs”, which is closely related to the Complainant’s business activities.

The Complainant asserts that the Respondent has no rights or legitimate interest in the disputed domain name. The Complainant states that it has never granted the Respondent any right to use the GLENCORE trade mark in the disputed domain name, nor is the Respondent affiliated to the Complainant in any form. The Complainant asserts that the Respondent is not commonly known by the disputed domain name nor has interest in it. When entering the terms “glencore” and “jobs” in the Google search engine, the returned results all point to the Complainant and its business activities. The Complainant says that the Respondent could have easily performed a similar search before registering the disputed domain name and would have quickly learnt that the GLENCORE trade marks are owned by the Complainant and that the Complainant has been using its trade marks in many countries around the world, including in Australia where the Respondent resides.

The Complainant asserts that when it prepared the Complaint on 3 February 2020, the disputed domain name did not resolve to any active website but only displayed message: “This domain is hosted by Absolute-Email.net”. The Respondent has not been using the disputed domain name to offer goods or services on the website and there is no evidence to show that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services, nor making a legitimate, non-commercial or fair use of the disputed domain name.

The Complainant also asserts that the disputed domain name was registered and is being used in bad faith. It submits that its trade marks predate the registration of the disputed domain name and that the Respondent has never been authorised by the Complainant to use these trade marks nor register the disputed domain name. In addition, the Complainant has an active presence under the trade mark GLENCORE in Australia where the Respondent resides and the Respondent very likely knew about the Complainant’s rights when it chose to incorporate the registered trade mark GLENCORE in the disputed domain name in its entirely and combine it with a generic term “jobs” which is closely related to the Complainant’s business activities.

The Complainant says that it tried to contact the Respondent on 10 September 2019 through a cease-and-desist letter. As the Respondent was using privacy shield service, the letter was sent via the registrant email <glencorejobs.com@softlayerdomainsprivacy.com> as shown in the WHOIS. It also contacted the Registrar SoftLayer via <abuse@softlayer.com> and sent reminders on 20 September 2019 and 27 September 2019. The Complainant also sent the cease-and-desist letter to the “Registration Service Provider”, Medusa Red Limited, by email to <domains@medusared.com> on 26 November 2019 and a reminder on 6 December 2019, requesting Medusa Red Limited to forward the communication to the Respondent.

The Complainant says that on 9 December 2019 the Respondent replied stating: “I have asked absolute email to delete the domain registration and that will happen within the next 10 working days and I will update you along with a copy of the confirmation email once it happens”. The Complainant says it requested a transfer instead of cancellation. The Respondent replied that the request was unclear and it was inconvenient to conduct a transfer and requested this be postponed until 16 December 2019. On 20 December 2019 the Complainant sent a reminder. On 8 January 2020 the Respondent replied that it was “busy” due to the holidays and said that it was requesting the “password”. On 14 January 2020 the Complainant sent a reminder to the Respondent but received no response.

The Complainant asserts that the Respondent promised to cooperate but did not keep its word and says that if the

Respondent was in of good faith, it should have complied with the deadlines, responded actively to the Complainant and kept the Complainant informed of any progress.

RESPONDENT:

The Respondent's response is brief and consists mainly of standard wording.

Under the heading "Respondent's Rights" it states: "Person related to owner or licensee (e.g. a subsidiary or manager of an owner)". Under the heading "Legal Grounds" it states: "The domain name(s) has not been registered and used in bad faith. Categories of issues involved:
a. Meaning of registration
i. Transfer to connected person
b. Registration of a domain name prior to trade mark right".

The Respondent's then states: "I don't know what to fill here and how to fill. I am so confused. What I can do is, I can provide the code to unlock domain and kindly forgive my mistake. Sorry. Please help me to solve this. I am begging".

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade mark 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

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 is being used in bad faith.

A. IDENTICAL OR CONFUSINGLY SIMILAR
It is generally accepted that the addition of the top-level suffix ".com" 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 trade mark. See International Business Machines Corporation v. Sledge, Inc./Frank Sledge (WIPO Case No. D2014-0581).

The disputed domain name incorporates the Complainant's trade mark GLENCORE in its entirety and adds to it the generic term "jobs". The addition of the generic term "jobs" to the Complainant's well known trade mark GLENCORE does nothing to avoid the overall impression that the disputed domain name is confusingly similar the Complainant's trade mark.

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

B. NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant must establish a prima facie case that the Respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of proof passes to the Respondent. See Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455.

The Panel finds that GLENCORE is well-known trade mark, including in Australia where the Respondent is located. The Panel accepts that the Respondent is not affiliated with the Complainant and is not authorised by the Complainant to use the GLENCORE trade mark. The Panel also accept the Complainant's assertion asserts that the Respondent is not commonly known by the disputed domain name and that the Respondent has used a privacy service to register the disputed domain name that incorporates the Complainant's trade mark GLENCORE.

The Complainant has established a prima facie case that the Respondent lack rights in the disputed domain name. The burden of rebuttal now shifts to the Respondent.

The Respondent has not denied any of the Complainant's assertions that the Respondent lacks rights or legitimate interests in the disputed domain name. Paragraph 4(c) of the Policy sets out a non-exhaustive list of how the Respondent can demonstrate that it has legitimate interests in the dispute domain name. The Respondent has not relied on any of these grounds nor provided any evidence to show that it has any rights in the disputed domain name, nor any evidence to show that it has used, or intends to use the disputed domain name in connection with a bona fide offering of goods or services. Nor does the Respondent assert that it commonly known by the disputed domain name or that it is making a legitimate non-commercial or fair use of the disputed domain name, without intent to mislead consumers or to tarnish the trade mark at issue.

Considering these factors and the evidence submitted the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. REGISTERED AND USED IN BAD FAITH

The Complainant must prove that the disputed domain name was both registered and used of in in bad faith.

The Complainant's trade mark GLENCORE predates the registration of the disputed domain name. The Complainant has operations in Australia where the Respondent resides. It appears most likely that the Respondent knew of the Complainant's rights in the name GLENCORE when it registered the disputed domain name. There appears no reason, and the Respondent has not submitted any reason, for registering the disputed domain name incorporating the Complainant's trade mark GLENCORE, other than to imply that the Respondent is in some way related to the Complainant. Considering these factors, the Panel finds that the disputed domain name was registered in bad faith.

The disputed domain name is being held passively. The passive holding of a domain name that has no other legitimate use and which clearly refers to the Complainant's well-known trade mark may constitute registration and use in bad faith. See Telstra Corporation Limited v. Nuclear Marshmellows (WIPO Case No. D2000-0003).

The Respondent has used a privacy service to register the disputed domain name. While there can be legitimate reasons for using a privacy service the Respondent has not given any reason for hiding its identity when it registered the disputed domain name that incorporates the Complainant's well-known GLENCORE trade mark.

The Respondent has not submitted any actual or intended good-faith use and has delayed and failed to co-operate with the Complainant's cease and desist letter. Given the Complainant's long-standing rights in the name GLENCORE, it is inconceivable that there could a non-infringing use by the Respondent of the disputed domain name.

Considering all these factors and the evidence submitted the Panel finds that the Respondent registered and is using the disputed domain name 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. **GLENCOREJOBS.COM**: Transferred

PANELLISTS

Name	**Veronica Bailey**

DATE OF PANEL DECISION 2020-04-13

Publish the Decision