

Decision for dispute CAC-UDRP-104885

Case number	CAC-UDRP-104885
Time of filing	2022-09-30 09:37:38
Domain names	SUPERFLASHCARDS.COM

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Intesa Sanpaolo S.p.A.
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Complainant representative

Organization	Intesa Sanpaolo S.p.A.
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Respondent

Name	David Czinczenheim
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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 owns two EU Trademark registrations:

- 1) reg.7352255 SUPERFLASH as of 2008 renewed in 2018 in classes 16 and 36; and
- 2) Reg.9617887 SUPERFLASH as of 2010 renewed in 2020 in classes 9, 36, 38, 41 and 42.

Intesa SanPaolo is also proprietor of two SUPERFALSH domain names: <SUPERFLASH.IT> and <SUPERFLASH.NET> both linked to the web site Intesa SanPaolo.com.

FACTUAL BACKGROUND

The Complainant is one of the leading Italian banking groups. The Complainant supports its corporate banking customers in 25 Countries and it is among the top banking groups in the Eurozone with a market capitalisation over 33 billion euro. It has a network of 3.700 branches capillary well distributed. Several years ago the Complainnat launched its SUPERFLASH program.

PARTIES' CONTENTIONS

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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

Identical or Confusingly Similar

In cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered confusingly similar to that mark for purposes of the UDRP.

According to the consistent case law of this Court where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

The disputed domain name includes the Complainant's trademark SUPERFLASH, adding the descriptive and generic term "cards" does not preclude a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

Considering the above the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests

The Complainant has established prima facie that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds a right or legitimate interest in the disputed domain name.

The Respondent is not commonly known by the disputed domain name, which could demonstrate its right or legitimate interest (see, e.g., World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe, [WIPO Case No. D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated bona fide or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., Sportswear Company S.P.A. v. Tang Hong, [WIPO Case No. D2014-1875](#)).

Considering the above the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

Registered and Used in Bad Faith

The Panel considers that at the time of the registration of the disputed domain name the Respondent knew, or at least should have known about the existence of the Complainant's prior identical trademark, which confirms bad faith.

According to the consistent case law of this Court, panelists have found that redirection to parking pages in which the disputed domain name is offered for sale constitutes bad faith (Wipo Case No. D2002-005 United Artists Theatre Circuit Inc. vs Domain for sales Inc. as of 27 March 2002).

Decision

The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The disputed domain name reproduces the Complainant's trademark adding numbers, which does not preclude the confusing similarity.

The Respondent has no rights or legitimate interest in respect to the disputed domain name. The Respondent has not been authorized or licensed by the Complainant to use the disputed domain name. The Respondent is not commonly known by the disputed domain name.

There is no fair or noncommercial use of the disputed domain name.

The disputed domain name was registered and is used in bad faith. The Complainant's trademark is well-known and the Respondent should have been easily known about the trademarks and about the active project carried out by the Complainant with the simple search on the internet.

The disputed domain name is not used for any bona fide offering. The disputed domain name was registered primarily to sell, rent or otherwise to transfer it to the Complainant or its competitors.

As the Complainant rightly stated "Although Respondent's offer of the disputed Domain Name for sale was not made specifically to Complainant or its competitor, offers for sale to the public may nevertheless constitute evidence of bad faith under the Policy" (United Artists Theatre Circuit Inc. v. Domains for Sale Inc., WIPO Case No. D2002-0005, March 27, 2002).

Furthermore "The sole fact that the disputed domain names have been registered by a person that does not use them but publicly offers them for rent or sale is the most perfect evidence of a bad faith activity in prejudice of Internet community and of the owner of the trademarks used as domain names" (TV Globo Ltda. v. Radio Morena, WIPO Case No. D2000-0245).

From the evidence filed by the Complainant which were not rebutted by the Respondent it is crystal clear that the registration of the disputed domain name was primarily made to damage the actual owner of the trademark SUPERFLASH: "The Panel accepts the Complainant's submissions that [...] it is not possible for the Respondent to have been unaware of the Complainant's [...] brand and associated trademarks prior to registering the Domain Name. As a consequence, the Panelist finds that in registering the Domain Name, the Respondent was aware of the Complainant's [...] brand and associated trademarks. Given the above information [...] the Panelist can find no plausible circumstances in which the Respondent could legitimately use the Domain Name" (see Microsoft Corporation v. Superkay Worldwide, Inc. - Case No. D2004-0071).

Likewise, it is not possible for the Panel to "conceive a plausible situation in which the Respondent would have been unaware of this fact at the time of registration". (Telstra Corporation Limited v. Nuclear Marshmallows - WIPO Case No. D2000-0003). On the contrary, the disputed domain name "is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith" (Veuve Clicquot Pnsardin, Maison Fondée en 1772 v. The Polygenix Group Co. - WIPO Case No. D2000-0163). Besides, "It is not likely that any trader would choose a name including the trademark [...] if not to create an impression of association with the Complainant" (Benetton Group S.p.A. v. Azra Khan - Case No. D2002-0810).

For the foregoing reasons the Panel orders that the disputed domain name <SUPERFLASHCARDS.COM> be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. SUPERFLASHCARDS.COM: Transferred

PANELLISTS

Name	Massimo Cimoli
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DATE OF PANEL DECISION 2022-11-04

