

Decision for dispute CAC-UDRP-104878

Case number CAC-UDRP-104878

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Domain names magyarfr.com

Case administrator

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

Complainant

Organization ETABLISSEMENTS MAGYAR

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name davis rogers

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

Since 1945, ETABLISSEMENTS MAGYAR (« G. MAGYAR company » - the Complainant) designs, manufactures and markets tanks for the transportation of all liquids products: edible, chemical or petroleum.

The Complainant is the owner of numerous trademarks MAGYAR® such as:

- French trademark n° 1442616 registered on December 31, 1987;
- European trademark n° 776997 registered on August 30, 2000;
- International trademark n° 528773 registered on May 30, 1988.

The Complainant also owns a number of domain names, including the same distinctive wording MAGYAR®, such as the domain name <magyar.fr>, registered since September 24, 1998.

The disputed domain name was registered on September 18, 2022 and resolves to commercial links. However, the domain name has been used for phishing scheme.

FACTUAL BACKGROUND

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

The Complainant states that the disputed domain name <magyarfr.com> is confusingly similar to its trademark MAGYAR® and its domain names associated.

The Complainant asserts that the addition of the letters "FR" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark MAGYAR®. It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP" (WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin).

Moreover, the Complainant contends that the addition of the suffix ".COM" does not change the overall impression of the designation as being connected to the trademark MAGYAR®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated. WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.").

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name;

(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name. For instance Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).").

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 MAGYAR®, or apply for registration of the disputed domain name.

Furthermore, the disputed domain name has been used for phishing scheme. The Complainant further argues that Respondent uses the disputed domain name in order to pass off as Complainant. Impersonating a complainant in a confusingly similar domain name is neither a bona fide offering of goods or services, nor a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii). See DaVita Inc. v. Cynthia Rochelo, FA 1738034 (Forum July 20, 2017) ("Passing off in furtherance of a phishing scheme is not considered a bona fide offering of goods or services or legitimate noncommercial or fair use."). Thus, the Complainant finds that Respondent does not provide a bona fide offering of goods and services pursuant to Policy 4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy 4(c)(iii).

C. The disputed domain name was registered and is being used in bad faith;

(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

The Complainant finds that the reproduction of the Complainant's trademark along with the term "fr" creates a likelihood of confusion between the Complainant's trademark and the disputed domain name. This evidence supports a finding that the Respondent was engaged in an attempt to pass himself off as the Complainant by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of his website for his own commercial benefit.

Furthermore, the Complainant argues that Respondent uses and registered the disputed domain name in a bad faith attempt to perpetuate a phishing scheme. Generally, using a disputed domain name to fraudulently phish for information is evidence of bad faith pursuant to Policy 4(a)(iii). See Morgan Stanley v. Bruce Pu, FA 1764120 (Forum Feb. 2, 2018) ("[T]he screenshot of the resolving webpage allows users to input their name and email address, which Complainant claims Respondent uses that to fraudulently phish for information. Thus, the Panel agrees that Respondent phishes for information and finds that Respondent does so in bad faith under Policy 4(a)(iii)."). The Respondent uses the disputed domain name to attempt to extract valuable personal information from users with the use of the goodwill associated with Complainant's mark to promise fraudulent financial services. This is evidence that Respondent registered and uses the domain name in bad faith to facilitate a phishing scheme under Policy 4(a)(iii).

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).

This is a case of "typosquatting", i.e. the disputed domain name contains an obvious misspelling of the Complainant's trademark. It is well established that the specific top level of a domain name such as ".com", ".org" or in casu ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar. In adding the abbreviation "fr" for France in the disputed domain name and then the top level .com does not take away the confusing similarity between the Complainant's trademark MAGYAR and the Complainant's domain name magyar.fr on one hand and the disputed domain name on the other.

Simple exchange or adding of non-distinctive letters, like in casu "fr" is not a sufficient element to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks and domain names.

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).

The Complainant contends that the Respondent is not affiliated with him nor authorized by them in any way to use their trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark MAGYAR and the presented phishing documentation, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The Complainant has evidenced that the disputed domain name enables the Respondent to send emails using an e-mail address that contains the disputed domain name. Furthermore, the Complainant has evidenced that the disputed domain name has been used as part of a phishing scheme. With no complaint response from the Respondent to the contrary it seems that the Respondent has registered the disputed domain name only for the purpose of making bad faith use of the disputed domain name as part of an e-mail address. The Panel notes in this connection that passive holding of a domain name does not prevent a finding of bad faith use under 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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

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 with respect to the disputed domain name; and

iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is fully incorporated in the disputed domain name.

The disputed domain name is therefore deemed confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered. There is no present use of the disputed domain name but the disputed domain name enables the Respondent to send emails using an e-mail address that contains the disputed domain name and the Respondent have used such e-mail addresses as part of a phishing scheme. It is concluded that the Respondent makes bad faith use of the disputed domain name.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **magyarfr.com**: Transferred

PANELLISTS

Name	Lars Karnoe
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DATE OF PANEL DECISION 2022-11-08

Publish the Decision
