

Decision for dispute CAC-UDRP-104966

Case number	CAC-UDRP-104966
Time of filing	2022-11-02 09:11:39
Domain names	get-klarna.com , get-klarna.net

Case administrator

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

Organization	Klarna Bank AB
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Complainant representative

Organization	SILKA AB
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Respondent

Organization	Glas tech Ltd
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following registered trademark (among others):

International registered trademark: KLARNA, registered on March 4, 2014 under number 1217315, for goods and services in Nice Classes 35, 36, 39, 42 and 45, and designated in respect of some 12 territories.

FACTUAL BACKGROUND

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

Founded in Stockholm in 2005, the Complainant operates a banking and payments business in 45 countries with more than 5,000 employees, serving in excess of 450,000 merchants, 150 million consumers and undertaking approximately 2,000,000 daily transactions. The Complainant offers payments solutions to e-stores which have attracted major international clients.

The Complainant owns various trademark registrations pertaining to the KLARNA mark, including International registered trademark for the word mark KLARNA, registered on March 4, 2014 under number 1217315, for goods and services in Nice Classes 35, 36, 39, 42 and 45, and designated in respect of some 12 territories.

The Complainant has registered a number of domain names under several different Top-Level Domains containing the term "klarna", for example <klarna.com> (created December 12, 2008), as well as multiple others. Such domain names are used to inform potential customers about the Complainant's KLARNA mark and its products and services.

The disputed domain names were both registered on July 12, 2022. Each directly and entirely incorporates the Complainant's KLARNA mark. The addition of dashes, the generic word "get" or generic Top-Level Domains (gTLD) such as ".com" or ".net" does not add any distinctiveness to the disputed domain names, thus they should be considered confusingly similar to the KLARNA registered trademark in which the Complainant has rights.

The Complainant has not found that the Respondent is commonly known by the disputed domain names and there is no evidence that the Respondent has a history of using, or preparing to use, the disputed domain names in connection with a bona fide offering of goods and services.

The disputed domain name <get-klarna.com> is redirected to an error page on the Complainant's SOFORT subsidiary's website. SOFORT has been a subsidiary of the Complainant since 2014. The act of redirecting a domain name containing the Complainant's trademark to an error page on the Complainant's subsidiary's website clearly indicates that the Respondent was well-aware of the Complainant's registered trademark rights, has not been and is not using the said disputed domain name in connection with any bona fide offering of goods or services or any legitimate noncommercial or fair use, and clearly lacks any legitimate interests in the said disputed domain name.

The disputed domain name <get-klarna.net> does not resolve to any active website. It has been established in previous UDRP cases that such use cannot constitute a right or legitimate interest.

Such use of the disputed domain names does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer any rights or legitimate interests in the disputed domain names upon the Respondent.

The nature of the disputed domain names carries a risk of implied affiliation with the Complainant as the disputed domain names consist of Complainant's KLARNA mark in its entirety, along with the addition noted above.

The Respondent has been granted an opportunity to present some compelling arguments that it has rights in the disputed domain names but it has failed to do so. Such behavior together with the use of the disputed domain names cannot be considered as legitimate use under the Policy.

The Complainant's trademark predates the registrations of the disputed domain names and it seems highly unlikely that the Respondent was not aware of the existence of said mark and the unlawfulness of the registration of the disputed domain names. The addition of the generic term "get" in combination with the KLARNA mark (which is a distinctive mark lacking any generic meaning) in the disputed domain names, further shows that Respondent has knowledge of the Complainant and its services as something that Internet visitors can "get". This creates a presumption of bad faith.

The Respondent has failed to respond to the communication attempts made by the Complainant, which should also be considered an indication of a bad faith registration. The Complainant tried to contact the Respondent on August 23, 2022 through a cease-and-desist letter. The letter was sent to the contact email listed in the Whois record as well as the abuse contact email. In the cease-and-desist letter, the Complainant advised the Respondent that the unauthorized use of its trademark within the disputed domain names violated its trademark rights and requested a voluntary transfer of the disputed domain names. However, no reply was received. Since the effort of trying to solve the matter amicably was unsuccessful, the Complainant chose to file a complaint according to the UDRP process. It has been mentioned in earlier cases that the failure of a respondent to respond to a cease-and-desist letter, or a similar attempt at contact, has been considered relevant in a finding of bad faith.

Further, the Respondent has never been granted permission to register the disputed domain names and clearly knew about the Complainant's trademark at the time of registration of the disputed domain names.

The KLARNA brand is a globally well-known trademark. It is highly unlikely that the Respondent was unaware of the rights that the Complainant has in the trademark and the value of said trademark when the disputed domain names were registered. Inference of bad faith registration and use of the disputed domain names is also given by the fact that the Respondent never replied to the Complainant's cease and desist letter. It is reasonable to assume that if the Respondent did have legitimate purposes in registering and using the disputed domain names it would have responded. All of the above-mentioned circumstances together with the fact that the Respondent is merely using the one of disputed domain names for a redirect and the other is remaining inactive, clearly indicate the Respondent's bad faith registration and use. Consequently, the Respondent should be considered to have registered and to be using the disputed domain names 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 names are 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 names (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 names have been registered and are 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 KLARNA registered trademark by virtue of International Registered Trademark number 1217315. The second level of each of the disputed domain names contains the said mark in its entirety, prefixed by the word "get" with a hyphen. Neither the presence of the hyphen in the disputed domain names, nor the dictionary word "get", alter the fact that the Complainant's distinctive KLARNA mark is fully recognizable therein on a straightforward side-by-side comparison. It is the dominant and distinctive element of each of the disputed domain names, while the word "get", which is an imperative verb in this context, places all the emphasis in each disputed domain name upon the Complainant's mark by suggesting to Internet users that they can obtain something related to said mark by visiting that domain name. The generic Top-Level Domain in respect of each disputed domain name, namely ".com" and ".net" respectively, 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 names are confusingly similar to the Complainant's KLARNA trademark.

With regard to the second element of the Policy, the Complainant submits that it has not found that the Respondent is commonly known by the disputed domain names, that there is no evidence that the Respondent has a history of using, or preparing to use, the disputed domain names in connection with a bona fide offering of goods and services, and that the use of the disputed domain names, being passively held in the case of <get-klarna.net> and redirecting to an error page of the Complainant's subsidiary in the case of <get-klarna.com>, do not demonstrate any rights or legitimate interests under the Policy. The Complainant also points out that the presence of the KLARNA mark in the disputed domain names carries a risk of implied affiliation with the Complainant and that the Respondent has failed to reply to the Complainant's cease and desist notices with any form of compelling argument as to why it has registered the disputed domain names.

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 names. The Panel also finds that 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 and has not answered the Complainant's case in any other manner, such as by replying to its cease-and-desist letter.

The Panel accepts the Complainant's submission that the disputed domain names carry a risk of implied affiliation with the Complainant due to the presence in each of the Complainant's distinctive KLARNA mark. The fact that the Respondent has pointed one of the disputed domain names to the error page of one of the Complainant's subsidiaries indicates that the Respondent was fully aware of the Complainant's rights in its trademark and is using the disputed domain name concerned to impersonate the Complainant. Such use cannot confer any rights or legitimate interests upon the Respondent. The Panel notes that the other disputed domain name is passively held and accepts the Complainant's submission that this use would not give rise to rights or legitimate interests on the Respondent's part within the meaning of the Policy.

Accordingly, the Panel considers it reasonable in all the circumstances of this case to find that the Respondent has no rights or legitimate interests in the disputed domain names.

Turning to the third element assessment, namely the question of registration and use in bad faith in respect of the disputed domain names, the Panel notes that the disputed domain names were both registered on the same day, long after the Complainant's distinctive trademark was registered. The disputed domain names each contain the said KLARNA mark prefixed by the imperative verb "get" and a hyphen separator. This indicates to the Panel that the Respondent more likely than not had actual knowledge of the

Complainant's rights in said trademark at the point when the disputed domain names were registered. Furthermore, the fact that one of the disputed domain names has been pointed to an error message on the website of one of the Complainant's subsidiaries reinforces the notion that the Respondent was aware of the Complainant's rights and had formed the intention to target these when the disputed domain names were registered.

The present use of the disputed domain name <get-klarna.com> suggests to the Panel, on the balance of probabilities, that the Respondent is impersonating the Complainant or its subsidiary for a fraudulent purpose, given that the redirection to the Complainant's subsidiary's website causes an error in processing a payment to be reported to the Internet user when none has taken place. On any view, this could not be regarded as a bona fide use.

There is no website at the disputed domain name <get-klarna.net> and accordingly it is being "passively held". Such passive holding does not allow the Respondent to escape a finding of registration and use in bad faith in circumstances where, as here, the disputed domain name is confusingly similar to the Complainant's distinctive mark, the Respondent has failed to submit a Response or otherwise to provide any evidence of actual or contemplated good faith use, and it is implausible that the disputed domain name could be put to any such good faith use if its website were to become active (see, on this topic, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

In all of these circumstances, and in the absence of any rebuttal from the Respondent, the Panel finds that the Respondent has registered and is using the disputed domain names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **get-klarna.com** : Transferred
2. **get-klarna.net**: Transferred

PANELLISTS

Name	Andrew Lothian
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DATE OF PANEL DECISION **2022-11-25**

Publish the Decision
