

Decision for dispute CAC-UDRP-104840

Case number CAC-UDRP-104840

Time of filing 2022-11-04 09:30:54

Domain names manulife-canada.com

Case administrator

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

Complainant

Organization The Manufacturers Life Insurance Company

Complainant representative

Organization Microsoft Corporation

Respondent

Name Thomas Kracklan

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

Complainant is the owner of a family of MANULIFE trademark registrations worldwide (both with and without design or stylized elements), including Canadian Reg. No. TMA385240, issued 1991 in Cl. 9, 16, 35, 36, 37, 41, 44; European Reg. No. 000540989, issued 1999 in Cl. 16, 36, 41; Reg. 014106256, issued 2015, in Cl. 36, 41; and United States Reg. No. 74094413, issued 1993, in Cl. 36,41.

FACTUAL BACKGROUND

Complainant is a wholly-owned subsidiary of Manulife Financial Corporation ("Manulife") and a leading Canadian-based financial services company that offers a diverse range of financial protection products and wealth management services. Manulife is a leading international financial services group with principal operations in Asia, Canada, and the United States, where it has served customers for more than 155 years.

Serving tens of millions of customers with over a trillion U.S. dollars in assets under management and administration, Complainant's MANULIFE brand has received widespread media and industry recognition, including by Interbrand as one of the Best Canadian Brands. Manulife has been repeatedly ranked at the top spot among Canadian insurers on the Forbes list of the World's Best Employers.

Respondent created the Domain in 2022 according to the registrar's Whois verification response and is currently using it for hosting and MX (Mail) records.

PARTIES CONTENTIONS

Parties' Contentions:

The Complainant's contentions are as follows:

First UDRP Element - Confusing Similarity

The disputed domain name incorporates the registered mark MANULIFE and appends the geographical identifier "Canada." The applicable Top Level Domain is a standard registration requirement and, as such, is generally disregarded.

The MANULIFE mark is recognizable within the disputed domain name, and the geographical identifier word appended relates explicitly to headquarters of the Complainant.

Second UDRP Element - No Legitimate Interest

The Complainant has not authorized the Respondent to use its name or marks, and the Respondent cannot show it is legitimately known by the disputed domain name. Based on the evidence, the Respondent is likely using the disputed domain name for illegal activity consisting of sending fraudulent e-mail impersonating the Complainant, which Panels have categorically held can never confer rights or legitimate interests on a respondent. Specifically, the Complainant has evidence that someone is masquerading as an accounting specialist for Complainant using the e-mail "accounts@manulife-canada.com" using the disputed domain name. Respondent configured MX records (Mail records) on the disputed domain name in the DNS and uses the registrar's "Jellyfish" services, which Respondent likely uses to increase the rate of successfully delivering emails without getting blocked by spam filters.

Third UDRP Element - Registered and Used in Bad Faith

"It is well established that the mere registration of a domain name that is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith."

Manulife is a leading international financial services group with principal operations in Asia, Canada, and the United States, where it has served customers for more than 155 years. The Respondent likely registered the disputed domain name to commit fraud. There is evidence of e-mail from the disputed domain name with a signature purporting to come from Complainant's accounting specialist. The allegation is consistent with the MX (Mail) records that Respondent configured in the disputed domain name's DNS, which Respondent hosted specifically for e-mailing with the disputed domain name. Registering and using disputed domain name targeting Complainant's mark and likely masquerading as an accounting specialist for Complainant constitutes bad faith registration and use under Policy 4(b)(iii).

Some Panels have held that merely setting up mail servers on a confusingly similar domain is evidence that the domain name is being used in bad faith.

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 disputed domain name in this Complaint combines the Complainant's MANULIFE mark (registered, inter alia, in Canada for financial services since 1991), a hyphen, the generic term 'Canada' and the gTLD .com.

Punctuation marks such as hyphens and the addition of generic geographical terms do not serve to prevent confusing similarity between the disputed domain name and the Complainant's mark which is still identifiable within the disputed domain name. The gTLD .com does not serve to distinguish the disputed domain name from the Complainant's mark. Accordingly, the Panel finds that the disputed domain name is confusingly similar to a mark in which the Complainant has rights for the purpose of the Policy.

The Complainant has not authorised the use of its mark. There is no evidence or reason to suggest the Respondent is, in fact, commonly known by the disputed domain name.

The disputed domain name has been used for phishing. This is designed to be deceptive and confusing and pass off the Respondent as a representative of the Complainant. As such it cannot amount to the bona fide offering of goods and services or a legitimate fair use. Passing off in furtherance of a phishing scheme is not a bona fide offering of goods and services or a legitimate non commercial or fair use.

The Respondent has not answered this Complaint or rebutted the prima facie case put forward by the Complainant.

As such the Panel finds that the Respondent does not have rights or a legitimate interest in the disputed domain name and that the Complainant has satisfied the second limb of the Policy.

Impersonating a complainant by use of the complainant's mark in a fraudulent scam is disruptive and evinces bad faith registration and use.

As such, the Panel believes that the Complainant has made out its case that the disputed domain name was registered and used in bad faith and has satisfied the third limb of the Policy under para 4(b)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **manulife-canada.com**: Transferred

PANELLISTS

Name	Dawn Osborne
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DATE OF PANEL DECISION 2022-12-13

Publish the Decision
