

Decision for dispute CAC-UDRP-105000

Case number	CAC-UDRP-105000
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Time of filing	2022-11-21 09:23:58
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Domain names	loxone-lighting.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Loxone Electronics GmbH
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Complainant representative

Organization	MSA IP - Milojevic Sekulic & Associates
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Respondent

Organization	Privacy service provided by Withheld for Privacy ehf
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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 various trade mark registrations for its LOXONE word mark including European Union trade mark registration 008401523 registered on 28 January 2010 and United Kingdom trade mark registration 00908401523 registered on 2 July 2009. It also owns numerous domain name registrations that incorporate its LOXONE mark including <loxone.com> which was registered on July 5, 2008.

FACTUAL BACKGROUND

The Complainant based in Germany was founded in 2009 with a focus on creating smart homes and commercial buildings equipped with intelligent automation and has traded under the LOXONE mark since then. Since its inception it has grown to employ around 500 staff in 20 locations and a partner programme involving more than 17,000 partners worldwide. The total revenue generated by Loxone Group globally in 2020 was EUR 100,397.000.

The disputed domain name was registered on January 13, 2020 and resolves to a website which features the LOXONE trade mark and a logo that incorporates the LOXONE mark including a stylised X. The email address <office@loxone-lighting.com> is provided in the contact details section of the website. The Respondent is an individual based in the United States of America.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

The Complainant submits that the disputed domain name includes the Complainant's LOXONE trade mark in its entirety along with the generic term "lighting", separated by a hyphen which does not prevent a likelihood of confusion. On the contrary, says the Complainant, this increases the likelihood of confusion as the generic term "lighting" is indicative of the Complainant's business activities.

The Complainant says that the Respondent is not affiliated with it in any way and has not been authorised or licensed by the Complainant to use and register its trade mark or to seek registration of any domain name incorporating the trademark or any similar sign. The Complainant says that the Respondent has not demonstrated use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. It says that the disputed domain name resolves to an active website, displaying a homepage that includes in its top left corner and its bottom left corner a logo that is confusingly similar to the Complainant's own logo which incorporates the LOXONE trade mark, in an identical typeface, differing only in the addition of the color orange, and the addition of the term "lighting" next to stylized orange spots. In that sense, says the Complainant it cannot be inferred that Respondent is making a legitimate non-commercial or fair use of the disputed domain name in circumstances that he is seeking to create an impression of association with the Complainant.

Furthermore, says the Complainant there are e-mail servers (MX Records) configured in respect of the disputed domain name. It says that this means that there is a real possibility that Internet users are receiving emails from the email address <@loxonelighting.com> on the assumption that they were communicating directly with the Complainant, or an entity affiliated with this company. The Complainant says that the Respondent may have used e-mail addresses with the extension @loxone-lighting.com to impersonate the Complainant, and internet users searching for the Complainant's goods or services might have been tricked into disclosing their personal data and sensitive information. Additionally, says the Complainant, the website to which the disputed domain name resolves has a "Jobs" section, which indicates a potential phishing campaign towards persons who are seeking work opportunities at the Complainant's business.

Finally, the Complainant notes that the Respondent is an individual who is neither commonly known by the name "LOXONE" nor is in any way affiliated with the Complainant. It notes that the Respondent was a party as respondent in at least one previous UDRP proceedings which he has lost (see LEGO Juris A/S v. Domain Administrator, See PrivacyGuardian.org, Sara Rhoades, John Munoz, Black Anna, David Sisk, Todd J Sumrall, Hlwa Jennifer, Amanda Lane, Sandra James, Wayne K Wilson, Theresa W Chavez, Rebecca Steele, Andrew Doyle, Judy Lay, Barbara Smith, Theresa Chavez, Pat Weaver, Christopher Morrison, Asa Uribe, Henry Johnson, Timmy Rodriguez, Todd Sumrall, Tiffany Freund, Fred Miles, Samuel Vaughan, Harvey Wells, Joseph Dale, Name Redacted, Joshua Pate, Tina Clark, Judith R Woodard, Giriyei, BB BBC, Tammy Price, Arlene Mora, jingui, Josie Porter, Terry Dunlap, Randy Tardiff, Jesse Smith, Fredrick Gadson, William Daniels, adsfd Sokolowski, dreamhome.tdl, Mark Funk, Lucienne Labrador, Charlotte Murray, Carolyn Short, Antonia Gasparotto, Roger Vance, Susan Peterson, Margaret Bradley, Howard Diaz, Nancy Hunsaker, Mary C Hobbs, Francesco B Campbell, Adrienne K McNear, Wayne Rieley, Eugene Preston, Nichole Hutsell, Mary Dejesus, Bruce M Martinez, Michelle Verduzco, Lynn Morris, Cheryl Marshall, Lance J Hernandez, Lyman Katie, Candie Deloach, jacy fone, Elva W Rose, WIPO Case No. D2020-3305.

The Complainant says that it is implausible that the Respondent was unaware of Complainant when he registered the disputed domain name. It says that the choice of the disputed domain name including the Complainant's trade mark and the generic term "lighting" corresponding to Complainant's field of business suggests that the Respondent was perfectly aware of the Complainant and its trade mark upon registration of the disputed domain name.

It says that a simple search via Google or any other search engine using the keyword "LOXONE" would have demonstrated to the Respondent that all the results on the first page relate to the Complainant or its activities. It says that taking into account the worldwide reputation of the Complainant and its well-known LOXONE trade mark, it is hard to believe that the Respondent was unaware of the existence of Complainant and its trade mark at the time of registration of the disputed domain name.

As noted above, the Complainant submits that it is clear that Respondent's behaviour constitutes a pattern of conduct of preventing trademark holders from reflecting their marks in a corresponding domain name as indicated in Paragraph 4(b)(ii) of the Policy.

The Complainant says that the choice of the disputed domain name to include the Complainant's trade mark and the generic term "lighting" is clearly indicative of the Complainant's business activities and the fact that the website at the disputed domain name corresponds to a substantial range of the Complainant's products also suggests that the Respondent was perfectly aware of the Complainant and its trade mark. Furthermore, the website linked to the disputed domain name is used to show a representation of a logo that is confusingly similar to the Complainant's logo, which it says is protected by trade mark registration. The Complainant says that this cannot be considered as a bona fide offering of goods or services or as a legitimate, non-commercial fair use, and it further shows that the Respondent is aware of the Complainant and its business and has acted to mislead internet users into believing that the disputed domain name and the website to which it resolves are associated with the Complainant.

The Complainant says that it is likely that the Respondent registered the disputed domain name to prevent the Complainant from using its LOXONE trade mark in the disputed domain name in connection with the word "lighting" which describes the Complainant's field of business. Therefore, the clear inference that can be drawn from the Respondent's operations, says the Complainant, is that he is trying to benefit from the fame of the Complainant's marks and it seems likely that the Respondent's primary motive in registering and using the disputed domain name was to capitalize on or otherwise take advantage of Complainant's trade mark rights.

Furthermore, the Respondent registered the disputed domain name through the use of a privacy shield service to hide his identity in order to prevent the Complainant from contacting him.

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 Complainant has demonstrated that it owns registered trade mark rights for its LOXONE mark, namely European Union trade mark registration 008401523 registered on 28 January 2010 and United Kingdom trade mark registration 00908401523 registered on 2 July 2009. The disputed domain name wholly incorporates the LOXONE trade mark which is the dominant and distinctive element and disputed domain name is therefore confusingly similar to the Complainant's registered trade mark right. The inclusion of the common English word "lighting" in the disputed domain name does not prevent a finding of confusing similarity. Accordingly, the Complaint succeeds under the first element of the Policy.

The Complainant has submitted that the Respondent is not affiliated with it in any way and that the Respondent has not been authorised or licensed by the Complainant to use and register its trade mark or to seek registration of any domain name incorporating the trade mark or any similar sign. The Complainant has also submitted that the Respondent has not demonstrated use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. In this regard the Complainant has noted that the disputed domain name resolves to an active website, displaying a homepage that includes in its top left corner and on its bottom left corner a logo that appears to be confusingly similar to the Complainant's own logo. Certainly, it appears to the Panel as if the Respondent is attempting to present the website at the disputed domain name as if it belongs to or is affiliated with the Complainant when that is not the case. This is not consistent with the Respondent making a legitimate non-commercial or fair use of the disputed domain name.

The fact that there are e-mail servers (MX Records) configured in respect of the disputed domain name could be indicative that the Respondent might intend to use it for bad faith purposes but there is no actual evidence in this regard, except that the Respondent has failed to explain its registration and use of the disputed domain name, whether by repose to the pre-action letter sent by the Complainant's agents or in the course of these proceedings.

Finally, the Complainant has noted that the Respondent is an individual who is neither commonly known by the name "LOXONE" nor is in any way affiliated with the Complainant

The Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. As the Complainant's case has not been rebutted by the Respondent, the Panel finds for these reasons and as set out under Part C below, that the Complainant has successfully made out its case and that the Complaint also succeeds under the second element of the Policy

The disputed domain name was registered in 2020 many years after the Complainant first registered its LOXONE trade mark. The LOXONE trade mark is highly distinctive and this together with the fact that the disputed domain name wholly incorporates it together with the descriptive English word lighting and that it resolves to a website that contains a logo very similar to the Complainant's and which reads as if it is owned by or affiliated with the Complainant, creates a very strong inference that the Respondent was well aware of

the Complainant's LOXONE mark when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

The Respondent in this case has obviously used the disputed domain name containing the Complainant's LOXONE trade mark to confuse Internet users in order to re-direct them to a website that clearly masquerades as if it is the Complainant's genuine website, or is endorsed or affiliated by the Complainant. There is no apparent reason for this and the Panel infers that the Respondent ultimately is doing so for its own fraudulent purposes or commercial gain. This is evidence of registration and use in bad faith under paragraph 4(b)(iv) of the Policy.

That the Respondent was a party as a respondent in at least one previous UDRP proceeding (as noted by the Complainant) which he lost and that the Respondent used a privacy service in an attempt to mask his identity and also failed to respond to the Complainant's agent's pre-action letter or to explain itself in these proceedings only reinforces the Panel's view of his bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and has been used in bad faith and that the Complaint also succeeds under this element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **loxone-lighting.com**: Transferred

PANELLISTS

Name	Mr Alistair Payne
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DATE OF PANEL DECISION	2022-12-23
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Publish the Decision
