

Decision for dispute CAC-UDRP-104958

Case number	CAC-UDRP-104958
-------------	------------------------

Time of filing	2022-11-18 09:43:42
----------------	----------------------------

Domain names	xtlinecz.com
--------------	---------------------

Case administrator

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

Complainant

Organization	XTline s.r.o.
--------------	----------------------

Complainant representative

Name	Mgr. Jakub Šrámek advokát
------	----------------------------------

Respondent

Name	Zabih Ullah
------	--------------------

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 is the owner of a number of trade marks for XTLINE including, by way of example, European Union Trade Mark (figurative), registration number 007373426 in classes 6, 7 and 8, registered on August 4, 2009.

FACTUAL BACKGROUND

The Complaint is very brief, but the Panel has established that the Complainant is a designer and manufacturer of a variety of tools for business and professional use. It is based in the Czech Republic and its brand name is XTLINE.

The disputed domain name <xtlinecz.com> was registered on October 12, 2021. It does not resolve to an active website. However, the Complainant has provided evidence that, in 2021, the Respondent was using an email address associated with the disputed domain name in order to masquerade as the Complainant as part of a scam conducted against a number of companies based in the People's Republic of China.

The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. The Respondent has no rights or legitimate interests in respect of the disputed domain name. 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).

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

Paragraph 4(a) of the Policy requires that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Rights

The Panel finds that the disputed domain name is confusingly similar to the Complainant's XTLINE trade mark. For the purpose of determining whether the disputed domain name is identical or confusingly similar to its mark, the generic Top-Level Domain ("gTLD") ".com" is disregarded as this is a technical requirement of registration. The disputed domain name contains the Complainant's XTLINE mark in full, followed by the letters "cz". Where a complainant's mark is recognizable within a domain name, the addition of other terms, irrespective of their meaning, will not prevent a finding of confusing similarity; see CAC Case No. 102382, *MAJE v enchong lin*.

Rights and legitimate interests

The Policy sets out at paragraph 4(c) examples of circumstances, without limitation, by which a respondent may demonstrate rights or legitimate interests in a disputed domain name. These are, in summary: (i) if the respondent has been using the domain name in connection with a *bona fide* offering of goods and services or has made demonstrable preparations to do so; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name.

The only known use of the disputed domain name, has been as part of a scam, or attempted scam, in which the Respondent used an email address associated with the disputed domain name in order to masquerade as the Complainant. Such an activity cannot amount to a *bona fide* offering of goods and services. See, in this respect, section 2.13.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"); "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent". See

also CAC Case No. 104848, *LyondellBasell Industries Holdings B.V. v Julien Richard*.

There is no evidence that the Respondent is commonly known by the disputed domain name nor has it made a legitimate noncommercial or fair use of it. The Complainant having made out a *prima facie* case in relation to the second element, the burden of proof shifts to the Respondent to rebut it; see, for example, CAC Case No. 102333, *Amedei S.r.l. v sun xin*. In the absence of any response by it to the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

Having regard to the use to which the disputed domain name was put shortly following registration, it is clear that the Respondent registered it with an awareness of the Complainant and so that it could attempt to deceive third parties that it was, in fact, the Complainant. Registration of a domain name in these circumstances is in bad faith.

So far as bad faith use is concerned, the circumstances of the Respondent's registration and use of the disputed domain name fall within, or closely approximate to, the example of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy, namely that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or other online location. The fact that the disputed domain name does not resolve to a website is immaterial in these circumstances. As explained at section 3.4 of the WIPO Overview 3.0: "Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. ...Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers". See also CAC Case No. 102290 *Pepsico, Inc. v Bill Williamson*.

For these reasons the Panel finds that the disputed domain name was both registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **xtlinecz.com**: Transferred

PANELLISTS

Name	Antony Gold
------	--------------------

DATE OF PANEL DECISION	2022-12-22
------------------------	------------

Publish the Decision
