

Decision for dispute CAC-UDRP-104747

Case number CAC-UDRP-104747

Time of filing 2022-07-27 09:03:59

Domain names groupe-cogedim.com

Case administrator

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

Complainant

Organization COGEDIM

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization groupe-cogedim

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 numerous trademark registrations, such as:

- word "COGEDIM" EU trademark No. 009194697 registered on June 8, 2010;
- word "COGEDIM" French trademark No. 3697264 registered on December 8, 2009;
- figurative "COGEDIM" French trademark No. 96616996 registered on March 21, 1996.

The Complainant proved its ownership of listed trademark registrations by the submitted extract from the Registers.

FACTUAL BACKGROUND

The Complainant is a key player in new real estate development and carries out a large number of real estate programs with a distinctive architectural style and develops large-scale schemes throughout France, demonstrating its wide-ranging expertise. Since 1963, over 110,000 residential units have been completed by the Complainant.

Moreover, the Complainant is also the owner of several domain names, such as the domain name <cogedim.com>, registered and used since July 2, 1998.

The disputed domain name <groupe-cogedim.com> (hereinafter referred to as “disputed domain” or “disputed domain name”) was registered on July 15, 2022 and resolves to the parking page. Besides, MX servers are configured.

According to the Registrar verification, the Respondent is ‘groupe-cogedim’. The Respondent’s provided address as being at Paris, France.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

A. The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s trademarks. The Complainant contends that the disputed domain name fully incorporates the Complainant’s trademarks and so it is confusingly similar to the Complainant’s trademarks. The addition of French term “groupe” is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant’s trademarks. It does not change the overall impression of the designation as being connected to the Complainant’s trademark “COGEDIM”. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark. The Complainant states that 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. Vasily Terkin).

Furthermore, the Complainant alleges that the addition of the gTLD “.com” does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant. Its trademark and its domain names associated. The Complainant points out the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. where the panel held that “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 Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant asserts that 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 also 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.

The Complainant adds that the Respondent is identified in the Whois database as “groupe-cogedim”. However, the email address is not controlled by the Complainant or its entity in any way. Besides, the postal address available in the Whois is closely similar to the Complainant’s address in Paris. The Complainant asserts that the Respondent choose to register the domain name under the name “groupe-cogedim” to worsen the likelihood of confusion with the Complainant.

The Complainant states that neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademarks or apply for registration of the disputed domain name by the Complainant.

Finally, the Complainant points out and proves that the disputed domain name resolves to a parking page. The Complainant argues that Respondent did not make any use of the disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use it. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

C. The Complainant contends that the domain name has been registered and is being used in bad faith.

The Complainant states that the disputed domain name is confusingly similar to its trademarks. The Respondent has registered the domain name many years after Complainant had established a strong reputation and goodwill in its mark. The Complainant adds that the association of trademark "cogedim" and French term "groupe" only refers to the Complainant. The Complainant asserts that a basic search in respect of the term "groupe cogedim" by the Respondent would have yielded many references to the Complainant, its parent company ALTAREA and its services.

On those facts, given the distinctiveness of the Complainant's trademarks and reputation, the Complainant infers that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks.

The Complainant adds that the disputed domain name resolves to a parking page. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

The Complainant points out that prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use, for instance

- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;

- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

Finally, the Complainant states and demonstrates that the disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose [CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono ("There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.")].

RESPONDENT:

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 UDRP).

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 UDRP).

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 UDRP).

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

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. Therefore, the Panel proceeds to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them (Paragraph 5(f) of The Rules).

I. CONFUSING SIMILARITY

The Panel finds that the disputed domain is confusingly similar to the Complainant's trademarks "COGEDIM".

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter referred to as "The WIPO Overview 3.0") in Paragraph 1.7 states: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The WIPO Overview 3.0 in Paragraph 1.8 states: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

In the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin, the Panel stated that: "In numerous cases, it has been held that a domain name that wholly incorporates a Complainant's registered mark may be sufficient to establish confusing similarity for purposes of the UDRP."

In the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., the Panel stated that: "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".

The Complainant has demonstrated that owns numerous trademark registrations consisting of the term "cogedim" protected for services in the classes related to real estate business.

The Complainant's trademarks are incorporated in its entirety and clearly recognizable in the disputed domain <groupe-cogedim.com>. The addition of French general term "groupe" and of the gTLD <.com> does not change the overall impression of the disputed domain.

As stated in the WIPO Overview 3.0 in Paragraphs 1.7 and 1.8 where a domain name incorporates the entirety of a trademark, the domain will normally be considered confusingly similar.

Therefore, the disputed domain <groupe-cogedim.com> as it reproduces "COGEDIM" trademark in its entirety, with the addition of the French term "groupe" is considered to be confusingly similar to the relevant trademarks.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain.

According to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make case that the Respondent lacks rights and

legitimate interests in the disputed domain name. If the Complainant fulfils this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (see CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman).

Moreover, past Panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past Panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the UDRP, once the complainant has made something credible (prima facie evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In the WIPO No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., the Panel stated: "Complainant must make at least a prima facie showing that Respondent has no rights or legitimate interests in the mark. After Complainant has met its initial burden of proof, if Respondent fails to submit a response Complainant will be deemed to have satisfied Paragraph 4 (a) ii of the Policy."

In the CAC Case No. 102279, FileHippo s.r.o. v. whois agent, the Panel stated that "[i]n the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under Paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of Paragraph 4(a)(ii) of the Policy."

In the present case the Complainant states that the Respondent is not known by the Complainant. The Complainant also contends that the Respondent is not affiliated with nor authorized by the Complainant in any way and so the Respondent does not have any rights or legitimate interests in respect of the disputed domain name.

The Complainant establishes that the Respondent is identified in the Whois database as "groupe-cogedim" with address closely similar to the Complainant's address in Paris. Such address may in the view of the Panel worsen the likelihood of confusion between the parties.

Furthermore, from the provided evidence, the disputed domain resolves to the parking page. For this reason, the Complainant contends that the Respondent did not make any use of the disputed domain name and has no demonstrable plan to use it.

To the satisfaction of the Panel the Complainant has shown a prima facie case that the Respondent has no rights to the Complainant's trademarks nor the disputed domain name.

The Respondent did not reply to the Complaint and so failed to demonstrate its rights or legitimate interests in the disputed domain.

Thus, the Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the UDRP.

III. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.4 states: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

The WIPO Overview 3.0 in Paragraph 3.3 states: “From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.”

In the WIPO Case No. D2006-1440, National Football League v. Thomas Trainer, the Panel stated: “when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted.”

In the WIPO Case No. D2015-1167, Valero Energy Corporation and Valero Marketing and Supply Company v. Sharad Bhat, the Panel stated that: “In accordance with previous UDRP decisions, inactive or passive holding of a domain name, under the circumstances does not prevent a finding of bad faith use.”

In the present case, the Complainant owns numerous trademark registrations consisting of the terms “COGEDIM”. Moreover, the Complainant has certain reputation in the area of real estate development in France (see the WIPO Case No. D2020-2337, Altarea v. Loretta Zayas). Internet search made by the Complainant using “groupe cogedim” terms proved that the results are connected to the Complainant or its parent company Altarea.

Therefore, this Panel assumes that the Respondent must have been aware of the Complainant’s trademarks and their reputation before the registration of the disputed domain on July 15, 2022.

Furthermore, the disputed domain resolves to an inactive parking website. By that, the Respondent is passively holding the disputed domain. Moreover, the disputed domain has active MX records and so the domain may be used for e-mail purposes. In the CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono, past Panel stated that: “There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”

To sum up, according to this Panel, the Respondent must have been aware of the Complainant’s trademark in the time of registration of the disputed domain. This Panel states that the Respondent was using the disputed domain in bad faith. Following the above mentioned, the Panel finds that the Complainant has satisfied Paragraph 4(a)(iii) of the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. GROUPE-COGEDIM.COM: Transferred

PANELLISTS

Name	JUDr. Radim Charvát, Ph.D., LL.M.
------	-----------------------------------

DATE OF PANEL DECISION 2022-09-02

Publish the Decision
