

Decision for dispute CAC-UDRP-105069

Case number	CAC-UDRP-105069
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Time of filing	2022-12-30 09:31:51
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Domain names	marshallvietnam.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Marshall Amplification plc
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Complainant representative

Organization	Stobbs IP Ltd
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Respondent

Name	Tran Van Thanh
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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 submitted an internal document that contains a non exhaustive list of trademarks composed by the element MARSHALL. However the Complainant did not submit any official certificate of trademark registration or an extract of a trademark official database. The Panel points out that an internal document does not prove, per se, that the Complainant is effectively the owner of the mentioned trademarks if it not combined with official documents (such as a registration certificate or an extract of a trademark official database). That being said, the Panel made an independent search on the EUIPO database and retrieved that the Complainant owns numerous MARSHALL trademarks, including the EU reg. no. 000058065 dating back to April 1st, 1996.

The Complainant proved to own numerous domain names composed by MARSHALL, including <marshall.com> registered on June 1994.

FACTUAL BACKGROUND

The Complainant is a company founded in 1962 and active in the field of designing, amongst other products, music amplifiers, speaker cabinets, branded personal headphones and earphones, Natal Drums, drums and bongos.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant supports that the disputed domain name is confusingly similar to its prior trademarks and domain names as the sign MARSHALL is entirely comprised in the disputed domain name. The addition of the geographical element "VIETNAM" does not exclude the likelihood of confusion.

The Complainant denies that the Respondent has any rights on the disputed domain name nor that the use of it amounts to a legitimate non-commercial use or a bona fide offering of goods and services for the purpose of the policy.

The Complainant contends that the disputed domain name was registered in bad faith as at the time of the registration the Respondent was certainly aware of the Complainant exclusive rights on the trademark MARSHALL. Furthermore the use of the disputed domain name is considered in bad faith as the website to which <marshallvietnam.com> redirected was confusingly similar to the Complainant's website and reproduced the Complainant's trademark used in the same field of business in which the Complainant is active.

RESPONDENT:

the Respondent did not file any administrative response.

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.

According to Registrar verification submitted on December 23, 2022 the language of the Registration agreement is both English and Vietnamese. The Complainant filed the complaint in English which is in accordance with paragraph 11 of UDRP Rules. The Provider informed Respondent about the administrative proceeding in both English and Vietnamese. The Provider did not get any response.

PRINCIPAL REASONS FOR THE DECISION

1.The disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Complainant agrees that the disputed domain name is confusingly similar to the MARSHALL trademarks. According to a consolidated case law if the trademark is entirely comprised in the disputed domain name, the threshold requested by the First element of the Policy is met.

In the Panel's view the addition of the geographical term "vietnam" increases rather than excludes the risk of confusion for the public as it could be easily associated to the local branch of the Complainant.

Furthermore the addition of the ".com" gTLD is generally disregarded for assessing confusing similarity in view of its technical function.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a response to the Complaint. Therefore, it has filed no information on possible rights or legitimate interests it might hold on <marshallvietnam.com>. On its part, the Complainant has submitted information and arguments which, according to the Panel, are sufficient to conclude that the Respondent has no rights or legitimate interest in the disputed domain name.

According to the information provided by the Complainant, and not contested, the Respondent is not commonly known by the disputed domain name nor he has been authorized to use the Complainant's trademark.

The Panel agrees that the use of the disputed domain name does not amount to a bona fide offering of goods and services nor to a legitimate non-commercial use for the purpose of the Policy. The Complainant proved that the disputed domain name redirected to a website that reproduced the same look and feel of the Complainant's official website, as well as the Complainant's trademark and images of the Complainant's products.

For these reasons, the Panel takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the Policy.

3. The disputed domain name has been registered and is being used in bad faith.

The Respondent was clearly aware that the Complainant conducted its business under the MARSHALL trademark as:

- i) the disputed domain name was registered well after the Complainant's trademark registrations;
- ii) the trademark MARSHALL enjoys a considerable reputation in its field;
- iii) the disputed domain name redirected to a website which was very similar to the Complainant's official website.

Thus the Panel concludes that the disputed domain name was registered in bad faith.

As regards the use in bad faith, the Panel agrees that <marshallvietnam.com> is used in a way that could create risk of confusion with the Complainant's business. As a matter of fact, the disputed domain name operates a website that promotes the sale of **MARSHALL**-branded headphones and speakers, using the Complainant's **MARSHALL** trade mark.

All above considered the Panel finds the evidence submitted as sufficient to prove use and registration in bad faith of the disputed domain name for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **marshallvietnam.com**: Transferred

PANELLISTS

Name	Andrea Mascetti
DATE OF PANEL DECISION	2023-02-08
Publish the Decision	