

## Decision for dispute CAC-UDRP-105130

Case number	CAC-UDRP-105130
Time of filing	2023-01-16 09:25:41
Domain names	altarea-solution-service.com

### Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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### Complainant

Organization	ALTAREA
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### Complainant representative

Organization	NAMESHIELD S.A.S.
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### Respondent

Organization	Altarea-solution-service
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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

Complainant is the owner of several trademark registrations for ALTAREA which it uses in its business as property developer in France and in in this proceeding relies on its rights in:

- European Union Trade Mark ALTAREA, registration number 001148246, registered on November 8, 2000 for services in classes 35, 36, 37, and 42; and
- International trademark ALTAREA, registration number 907441 registered on July 12, 2006, for services in classes 35, 36, 37, and 42, and 45.

#### FACTUAL BACKGROUND

In addition to its ownership of the abovementioned registered service marks, the Complainant has an established Internet presence and it also owns several domain names that incorporate the ALTAREA trademark, including <altarea.com> which was registered and has been used for the Complainant's official website since March 3, 1999.

The disputed domain name <altarea-solution-service.com> was registered on July 11, 2022 and while it redirects to a parking page, it has been used to create an email address to perpetrate a phishing scheme.

There is no information available about Respondent, except for that provided in the Complaint, the Registrar's Whois and the information provided by the Registrar in response to the request by the Center for details of the registration of the disputed domain name for the purposes of this proceeding.

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#### PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

No administratively compliant Response has been filed.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

##### Complainant's Submissions

The Complainant submits that it was founded in 1994 and has grown to become the leading property developer in France developing a wide range of real estate assets including residential, retail, offices, and hotels, and providing logistics and serviced residence services.

The Complainant alleges that the disputed domain name is confusingly similar to the ALTAREA mark in which it has rights, arguing that the disputed domain name incorporates the Complainant's trademark in its entirety. The Complainant submits 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". See *Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin*. WIPO Case No. D2003-0888.

The Complainant further contends that the addition of terms "SERVICE" and "SOLUTION" within the disputed domain name are not sufficient to escape the finding that it is confusingly similar to Complainant's mark.

Complainant argues that the additional terms do not change the overall impression of the designation as being connected to the Complainant's trademark ALTAREA and so do not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

Furthermore, the Complainant contends that the addition of the generic Top-Level Domain ("gTLD") extension ".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. See *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.* WIPO Case No. D2006-0451, ("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.").

Finally, the Complainant adds that its rights over the term "ALTAREA" have been confirmed by previous UDRP decisions. See ALTAREA v. Above.com Domain Privacy CAC Case No. 104712 and ALTAREA v. Redacted for privacy CAC Case No. 104676.

Thus, the disputed domain name <altarea-solution-service.com> is confusingly similar to the Complainant's trademark ALTAREA.

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain name, arguing that according to the Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455, the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name and past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, it is contended, the Respondent is not known as the disputed domain name. See for instance Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group Forum Case No. FA 1781783, ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).").

The Complainant asserts that the Respondent is not known by the Complainant, and adds that the Respondent is not affiliated with nor authorized by the Complainant in any way, nor does the Complainant does not carry out any activity for, or have any business with the Respondent.

The Complainant further asserts that it has not granted any license nor authorization to the Respondent to make any use of the Complainant's trademark ALTAREA, or apply for registration of the disputed domain name by the Complainant.

The Complainant refers to a screen capture which is exhibited in an annex to the Complaint, and submits that it shows that the disputed domain name resolves to a parking page.

However, the Complainant further asserts that the domain name has been registered for phishing scheme which cannot be a bona fide or legitimate purpose. See DaVita Inc. v. Cynthia Rochelo, Forum Case number FA 1738034 (Forum July 20, 2017) ("a phishing scheme is not considered a bona fide offering of goods or services or legitimate noncommercial or fair use.").

Accordingly, Respondent has no rights or legitimate interests on the disputed domain name.

The Complainant finally submits that the disputed domain name was registered and is being used in bad faith, arguing that the Respondent registered the disputed domain name with actual knowledge of Complainant's trademarks.

The Complainant submits that under Policy paragraph 4(a)(iii), actual knowledge can form a foundation for demonstrating bad faith registration and may be established by examining a respondent's use of a disputed domain name. See iFinex Inc. v. xu shuaiwei, Forum Case number FA 1760249 (Forum January 1, 2018) ("Respondent's prior knowledge is evident from the notoriety of Complainant's BITFINEX trademark as well as from Respondent's use of its trademark laden domain name to direct internet traffic to a website which is a direct competitor of Complainant").

The Complainant argues that the Respondent uses and registered the disputed domain name in a bad faith to perpetuate a phishing scheme in an attempt to defraud consumers with Complainant's mark to promise fraudulent financial services.

The Complainant contends that generally, using a disputed domain name to fraudulently phish for information is evidence of bad faith pursuant to Policy paragraph 4(a)(iii). See Morgan Stanley v. Bruce Pu, Forum Case Number FA 1764120 (Forum February 2, 2018) ("The screenshot of the resolving webpage allows users to input their name and email address, which Complainant claims Respondent uses that to fraudulently phish for information. Thus, the Panel agrees that Respondent phishes for information and finds that Respondent does so in bad faith under Policy ¶ 4(a)(iii).").

#### Complainant's Rights

Complainant has provided convincing, uncontested evidence that it has rights in the ALTAREA mark, established by the ownership of the portfolio of trademark registrations described above. Furthermore, the Complainant's uncontested evidence is that since June 2019, the Complainant has built a goodwill in the mark by its use in its business which has grown to managing 11 major mixed use projects representing potential value of approximately €3.5 billion.

#### Confusing Similarity

The disputed domain name <altarea-solution-service.com> consists of Complainant's ALTEREA mark in its entirety, two hyphens, the terms "solution" and "service" together with the gTLD extension ".com".

Complainant's ALTEREA mark is the initial, dominant and only distinctive element in the disputed domain name. The hyphens add no distinguishing character to the disputed domain name, but separate the other elements and thereby add emphasis to the Complainant's mark.

The words "solution" and "service" are descriptive and generic and do not prevent a finding that the disputed domain name is confusingly similar to Complainant's mark.

Similarly, the gTLD extension <.com> does not prevent a finding of confusing similarity as the circumstances of this proceeding, it

would be considered to be a necessary technical requirement for a domain name registration.

This Panel finds therefore that the disputed domain name is confusingly similar to the ALTAREA mark in which Complainant has rights and Complainant has therefore succeeded in the first element of the test in Policy paragraph 4(a)(i).

#### Respondent's Rights and Legitimate Interests

Complainant has made out a prima facie case that Respondent has no rights legitimate interests in the disputed domain name arguing that:

- the Respondent is not identified in the Whois database as the disputed domain name;
- the Respondent is not known by the Complainant;
- the Respondent is not affiliated with nor authorized by the Complainant in any way;
- the Complainant does not carry out any activity for, or have any business with the Respondent;
- the Complainant has not granted any license nor authorization to the Respondent to make any use of the Complainant's trademark ALTAREA, or apply for registration of the disputed domain name by the Complainant;
- the screen capture which is exhibited in an annex to the Complaint shows that the disputed domain name resolves to a parking page, but has also been used to create an email account to send emails to perpetrate a phishing scheme;
- the Respondent is not using the disputed domain name for a bona fide or legitimate purpose.

It is well established that once a complainant makes out a prima facie case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

Respondent has failed to discharge that burden and therefore this Panel must find that Respondent has no rights or legitimate interests in the disputed domain name.

Complainant has therefore succeeded in the second element of the test in Policy paragraph 4(a)(ii).

#### Registration and Use in Bad Faith

Complainant has adduced clear and convincing, uncontested evidence that it has registered service mark rights in the ALTAREA mark which was first registered on November 8, 2000, long before disputed domain name <altarea-solution-service.com> was registered on July 11, 2022.

ALTAREA is a distinctive mark and it is improbable that the disputed domain name which incorporates the mark in its entirety as its initial and dominant and only distinguishing element was chosen and registered without knowledge of and regard for the Complainant, its extensive business and goodwill and business in the ALTAREA mark.

This Panel finds therefore that on the balance of probabilities the disputed domain name was chosen and registered in bad faith with Complainant in mind for the purpose of creating the false impression that it has some connection with the Complainant, to take predatory advantage of the Complainant's mark, and to create confusion among Internet users.

The uncontested evidence adduced by Complainant shows that the disputed domain name redirects to a parking page.

The Complainant has also adduced credible and uncontested evidence, in the form of an exchange of email correspondence, that the disputed domain name has been used to create an email account to perpetrate a phishing scheme.

Such use of a domain name in an attempt to perpetrate a phishing scheme constitutes use of the disputed domain name in bad faith for the purposes of the Policy.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, Complainant has succeeded in the third and final element of the test in Policy paragraph 4(a)(iii) and is entitled to succeed in this application.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **altarea-solution-service.com**: Transferred

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#### PANELLISTS

Name	James Bridgeman
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DATE OF PANEL DECISION 2023-02-12

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