

Decision for dispute CAC-UDRP-105082

Case number	CAC-UDRP-105082
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Time of filing	2022-12-28 16:46:16
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Domain names	huaweiksa.com
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Case administrator

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

Organization	HUAWEI TECHNOLOGIES CO. LTD.
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Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
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Respondent

Organization	Salla Application Company
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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 is the owner of the following trademark registrations for the sign "HUAWEI" (the "HUAWEI trademark"):

- the trademark HUAWEI with registration No.981955, registered on 14 April 1997 in China for goods in International Class 9;
- the trademark HUAWEI with registration No. 4824398, registered on 6 October 2015 in the United States for goods in International Class 9; and
- the European Union trademark HUAWEI with registration No. 009967531, registered on 16 December 2011 for goods and services in International Classes 1 - 45.

FACTUAL BACKGROUND

The Complainant was founded in 1987. It is a leading global provider of information and communications technology (ICT) infrastructure and smart devices. The Complainant has approximately 197,000 employees and operates in over 170 countries and regions, serving more than three billion people around the world. The Complainant owns the domain name <huawei.com>, which resolves to its official website.

The disputed domain name was registered on 19 October 2022. It resolves to an Arabic language website offering what appear to be the Complainant's HUAWEI products for sale with prices in Saudi Riyals. The website also includes some English language words and statements.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant submits that the disputed domain name is confusingly similar to its HUAWEI trademark, as it reproduces this trademark with the addition of the letters "ksa" - the common abbreviation of the "Kingdom of Saudi Arabia", which is not sufficient to avoid the likelihood of confusion.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because there is no relationship between the Parties, the Respondent is not commonly known by the disputed domain name and has no relevant trademark rights, and the Complainant has not authorized the Respondent to use the HUAWEI trademark or to register the disputed domain name.

The Complainant adds that the Respondent is not making a bona fide offering of goods or services through the disputed domain name or carrying out a legitimate non-commercial or fair use of it. Rather, the Respondent uses the disputed domain name, which tends to suggest sponsorship or endorsement by the Complainant, to impersonate it and to offer for sale products, allegedly from the Complainant's, at reduced prices. It is not known whether these goods are genuine or not. The Respondent prominently displays the Complainant's trademarks on its website and pretends to act under the company name "Huawei". According to the Complainant, the Respondent has thus engaged in a fraudulent scheme designed to be deceptive and confusing.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that its HUAWEI trademark was registered many years before the disputed domain name. According to the Complainant, the Respondent has registered the disputed domain name with knowledge of this trademark and targeting it.

The Complainant maintains that the Respondent is using without permission the Complainant's well-known HUAWEI trademarks in order to get traffic to its website and to obtain commercial gain from the false impression created for the Internet users with regard to a potential affiliation or connection with the Complainant. This false impression is increased by using the disputed domain name to access a website prominently displaying the Complainant's HUAWEI trademarks. The website is offering identical goods to those of the Complainant under the Complainant's trademarks, which carries a risk of implied affiliation with the Complainant. Therefore, the Respondent is using the disputed domain name to intentionally attract, for commercial gain, Internet users to the website, by creating a likelihood of confusion with the Complainant's HUAWEI trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ...”

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the HUAWEI trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence “huaweiksa”, which reproduces the HUAWEI trademark entirely with the addition of the letters “ksa”. As noted by the Complainant, this represents the commonly used abbreviation for “Kingdom of Saudi Arabia”. The addition of this non-distinctive element has a low effect on the overall impression made by the disputed domain name, in which the HUAWEI trademark is easily distinguishable. As discussed in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Overview 3.0”), in cases 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.

Taking all the above into account, the Panel finds that the disputed domain name is confusingly similar to the HUAWEI trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because there is no relationship between the Parties and Respondent is not commonly known under the disputed domain name. The Complainant also points out that the disputed domain name resolves to a website that attempts to impersonate the Complainant and misleads consumers into thinking that the website belongs to or is affiliated to the Complainant. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided a plausible explanation of its registration and use of the disputed domain name.

In the Panel’s view, the circumstances of this case do not contradict the prima facie case made by the Complainant and do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It is confusingly similar to the Complainant’s HUAWEI trademark and its composition may create an impression that the disputed domain name represents an official online location of the Complainant for Saudi Arabia, which impression is strengthened by the fact that the associated website features HUAWEI products offered for sale in Saudi Riyals. There is no disclaimer for the lack of relationship with the Complainant; rather, the website contains statements that create the opposite impression, such as a copyright notice stating: “All rights reserved 2022

HUAWEI”, a “Who are we” section that states: “Huawei is a leading provider of information and communication technology (ICT) infrastructure and smart devices. Huawei Experience Shop in Dammam”, and an “Exchange and Return Policy” that states: “This return policy is from Huawei Experience Shop. Saudi Arabia Co., Ltd.”

Thus, the Respondent fails in at least one of the elements of the Oki Data test, as the website linked to the disputed domain name does not disclose accurately and prominently the registrant’s relationship with the trademark holder and does not meet requirements of the Oki Data test. See section 2.8.1(iii) of the WIPO Overview 3.0.

The circumstances of this case lead the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the HUAWEI trademark, has registered and used the disputed domain name targeting this trademark in an attempt to exploit its goodwill by confusing Internet users that the disputed domain name is affiliated to the Complainant, and attracting them to its website where what appear as HUAWEI goods are offered for sale. The Panel does note regard such conduct as legitimate and giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The registration of the Complainant’s HUAWEI trademark predates with many years the registration date of the disputed domain name, which reproduces this trademark entirely with the addition of the abbreviation for “Kingdom of Saudi Arabia”, and the goods featured on the associated website are offered for sale with prices in Saudi Riyals. This may lead Internet users to believe that the disputed domain name and the website to which it resolves denote an official online location of the Complainant for Saudi Arabia. The Respondent’s website offers products that appear as products of the Complainant, but contains no disclaimer for the lack of relationship with the Complainant and does not identify the provider of the goods offered. Rather, the notices on the website refer directly to the Complainant and create an impression that the website belongs to it or to an affiliated entity. The Panel is therefore of the view that the Respondent is more likely to have registered and used the disputed domain name with knowledge of the Complainant’s HUAWEI trademark and with the intention of taking advantage of its goodwill by impersonating the Complainant and diverting the Complainant’s customers to its website to offer them goods in competition with the Complainant for commercial gain.

This satisfies the Panel that the disputed domain name has been 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. **huaweiksa.com**: Transferred

PANELLISTS

Name	Assen Alexiev
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DATE OF PANEL DECISION 2023-02-14

Publish the Decision