

Decision for dispute CAC-UDRP-104242

Case number CAC-UDRP-104242

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Domain names 3shape.care

Case administrator

Name Iveta Špiclová (Case admin)

Complainant

Organization 3Shape A/S

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Ela Mann

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 registered owner of several trademark registrations consisting of and/or containing the term 3SHAPE, e.g. International registration no. 1142176 3shape (word), registered on October 15, 2012 for goods and services in classes 9 and 42 and designating several countries worldwide among others United States of America. This mark has been duly renewed and is in force.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

It results from the Complainant's undisputed allegations that it is a market-leading provider of dental and audio technologies for laboratories and clinics. It is a developer and manufacturer of 3D scanners and computer-aided system/computer-aided manufacturing ("CAD/CAM"). Based in Denmark, it provides dental and hearing aid professionals with industry-leading scanners and fully integrated software that creates highly streamlined processes for dental treatments. It employs more than 1,600 people serving customers in over 100 countries, it is headquartered Copenhagen, Denmark and has offices in many other countries around the world.

Moreover, the Complainant uses various domain names containing the term “3SHAPE”, in particular <3shape.com> (registered on May 17, 2000) which resolve to its official website through which it informs about its 3SHAPE mark and its products and services.

The Complainant further contends that 3SHAPE trademark is a widely known trademark in the field of dentistry.

The disputed domain name <3shape.care> was created on March 2, 2021 and resolves to an inactive webpage.

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

1. Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided that the Complainant is the registered owner of many trademarks consisting or containing the term 3SHAPE, e.g. International registration no. 1142176 3shape (word), registered on October 15, 2012 for goods and services in classes 9 and 42 and designating several countries worldwide amongst others United States of America. This mark has been duly renewed and is in force.

UDRP panels have found that a disputed domain name is identical or confusingly similar to a complainant’s trademark where the disputed domain name incorporates the complainant’s trademark in its entirety (e.g., Equinor ASA v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Gabriella Garlo, WIPO Case No. D2021-2885; Sanofi v. WhoisGuard Protected, WhoisGuard, Inc. / Todd Peter, WIPO Case No. D2020-2060; Virgin Enterprises Limited v. Domains By Proxy LLC, Domainsbyproxy.com / Carolina Rodrigues, Fundacion Comercio Electronico, WIPO Case No. D2020-1923). This Panel shares this view and notes that the Complainant’s registered trademark 3SHAPE is fully included in the disputed domain name.

Finally, the gTLD “.care” of the disputed domain name has to be disregarded under the first element confusing similarity test, since it is a standard registration requirement. The practice of disregarding the gTLD in determining identity or confusing similarity is applied irrespective of the particular gTLD (including with regard to “new gTLDs”) (see WIPO Overview of WIPO

Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) at section 1.11).

In the light of the above, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests to the disputed domain name. In the Panel’s view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent’s use of the trademark 3SHAPE, e.g., by registering the disputed domain name comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the nature of the disputed domain name carries a high risk of implied affiliation, since the disputed domain name is identical to the Complainant’s trademark 3SHAPE and that the trademark 3SHAPE is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant.

Generally speaking, previous UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation, see WIPO Overview 3.0, section 2.5.1. The Panel finds it most likely that the Respondent selected the disputed domain name with the intent to attract Internet users for commercial gain.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Complainant has put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name and the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, “in particular but without limitation”, be evidence of the disputed domain name’s registration and use in bad faith.

Based on the evidence submitted by the Complainant, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain name consisted of the Complainant’s trademark when it registered the disputed domain name. This is underlined by the fact that the disputed domain name is clearly constituted by the Complainant’s registered trademark 3SHAPE. Registration of the disputed domain name in awareness of the 3SHAPE mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

The disputed domain name does not resolve to an active website. In this regard, the Panel notes that the current passive

holding does not preclude a finding of bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003). In fact, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith: (1) the Respondent failed to submit a formal response or to provide any evidence of actual or contemplated good-faith use; (2) the Respondent failed to reply to the cease and desist letter sent by the Complainant before the commencement of this proceeding; (3) the Respondent used a privacy service hiding its identity; and (4) the implausibility of any good faith use to which the disputed domain name may be put (see WIPO Overview 3.0 at section 3.3).

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **3SHAPE.CARE**: Transferred

PANELLISTS

Name	Dr. Federica Togo
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DATE OF PANEL DECISION **2022-01-30**

Publish the Decision
