

Decision for dispute CAC-UDRP-105266

Case number	CAC-UDRP-105266
Time of filing	2023-03-06 11:01:53
Domain names	direct1-klarna.com, klarna-ag.com, klarnadirect.com, kcenter-klarna.com, klarna-deutschland.com, klarnadata.com, klarnacheck.com, klarnacenter.com, direct-klarna.com, klarna-center.com

Case administrator

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

Complainant

Organization Klarna Bank AB

Complainant representative

Organization SILKA AB

Respondent

Organization 1337 Services LLC

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is owner of the following registered trademarks:

<u>Trademark</u>	<u>Registration Date</u>	<u>Territory</u>	<u>Registration Number</u>
KLARNA	22-12-2010	International Reg. designating Russia, China, Turkey and Norway (WIPO)	1066079
KLARNA	07-12-2010	Europe	009199803
KLARNA	25-09-2012	Europe	010844462

KLARNA	02-08-2013	International Reg. designating the United States (WIPO)	1182130
KLARNA	31-07-2014	Europe	012656658
KLARNA	13-08-2014	USA	4582346

FACTUAL BACKGROUND

The Complainant, founded in 2005, is a Swedish e-commerce company that provides payment services for online storefronts, including direct payments, pay after delivery options and instalment plans in a one-click purchase flow. The Complainant has more than 5,000 employees, most of them working at the headquarters in Stockholm. As of 2011, about 40% of all e-commerce sales in Sweden went through the Complainant. Currently, the Complainant is one of Europe's largest banks providing payment solutions for over 150 million consumers across 450,000 merchants in 45 countries. In 2021, the Complainant handled about \$80 billion in online sales.

The disputed domain names were registered with privacy and proxy service by 1337 Services LLC (Host Master), a corporation located in Saint Kitts and Nevis, nearly on the same dates (between December 28, 2022 and January 2, 2023). At the moment of the filing of the Complaint, the disputed domain names did not resolve to any active website. In the past, two domain names out of ten (i.e., <klarna-ag.com> and <klarnadirect.com>) were used to resolve to a webpage with a script "Choose your bank" in German.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain names are confusingly similar to its trademark, since the KLARNA Trademark is reproduced in its entirety and the addition of the generic and descriptive terms do not prevent the likelihood of confusion between the disputed domain names and the Complainant's trademark.

The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark, or apply for registration of the disputed domain names by the Complainant.

Furthermore, the disputed domain names are not actively used. The Complainant contends that the Respondent has made no demonstrable preparations to use the disputed domain names in good faith. To the contrary, two domain names were previously used to resolve to a website with direct reference to the Complainant's activities. Therefore, the Respondent did not use the disputed domain names for any bona fide offering of goods or services.

Finally, the Complainant contends that the registration of disputed domain names confusingly similar to the well-known trademark of the Complainant and, thus, the constructive knowledge on behalf of the Respondent of the Complainant's potential rights, as well as the previous use and the current passive holding of the disputed domain names, clearly shows the Respondent's bad faith in the registration and use of the disputed domain names.

The Complainant requests the transfer of the disputed domain names.

RESPONDENT:

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

1. the Respondent's domain names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
2. the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
3. the Respondent's domain names have been registered and are being used in bad faith.

I. CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAMES TO THE COMPLAINANT'S MARK

The Complainant has established that it has rights in the KLARNA Trademark since 2010.

In assessing identity or confusing similarity, the Panel finds that the disputed domain names incorporate the entirety of the Complainant's trademark and differs from such mark by merely adding letters and/or generic and descriptive terms, such as "direct1", "ag", "direct", "kcenter", "deutschland", "data", "check", "center", in some cases a hyphen, and the TLD ".com". The addition of such letters and/or generic and descriptive terms to the Complainant's mark neither affects the attractive power of such trademark, nor is sufficient to distinguish the disputed domain names from the Complainant's mark.

In UDRP cases where the relevant trademark is recognizable within the disputed domain name, Panels agree that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) and letters does not prevent a finding of confusing similarity under the first element (see 1.8 WIPO Overview 3.0). UDRP panels also agree that the top-level domain is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark as it is a technical requirement of registration (see 1.11.1 WIPO Overview 3.0).

Hence, this Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain names are confusingly similar to the Complainant's mark.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names. If the 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 names (see 2.1 WIPO Overview 3.0).

The Complainant contends to have no relationship whatsoever with the Respondent, a corporation named 1337 Services LLC (Host Master) and based in the Saint Kitts and Nevis. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register and use the disputed domain names.

No evidence is available that the Respondent has been commonly known by the disputed domain names or has acquired any rights in a trademark or trade name corresponding to the disputed domain names.

The Respondent registered 10 domain names, all of them incorporating the Complainant's trademark plus additional non-distinctive terms and letters, and, thus confusingly similar to the KLARNA Trademark.

UDRP panels have found that domain names identical or confusingly similar to a complainant's trademark carry a high risk of implied affiliation. A domain name consisting of a trademark plus an additional term at the second- or top-level is seen as tending to suggest sponsorship or endorsement by the trademark owner. Thus, UDRP panels have largely held that such composition cannot constitute fair use.

Moreover, there is no evidence that, before any notice to Respondent of the dispute, he used, or demonstrably prepared to use, the domain names or names corresponding to the domain names in connection with a bona fide offering of goods or services.

Currently, the disputed domain names do not resolve to any active website. In the past, two domain names out of 10 (i.e., <klarna-ag.com> and <klarnadirect.com>) were used to resolve to a webpage with a script "Choose your bank" in German which is a direct reference to the business activities of the Complainant. It is evident that such use is not a bona fide use without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain names.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain names.

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

The disputed domain names have been registered and are being used in bad faith for the following cumulative reasons.

The Respondent has used a privacy or proxy service when registering the disputed domain names. Although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact the Panel's assessment of bad faith (see 3.6 WIPO Overview 3.0).

The disputed domain names are to be considered confusingly similar to the KLARNA Trademark, since they incorporate such mark in its entirety and differ from it merely by adding non-distinctive and descriptive terms, letters, hyphen, and the TLD ".com" (which is disregarded for the purpose of determination of confusing similarity between the disputed domain names and the trademarks of the Complainant as it is a technical requirement of registration).

UDRP 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 (see 3.1.4 WIPO Overview 3.0).

Given the distinctiveness and the reputation of the Complainant's prior mark, acquired over the years and confirmed in over 40 UDRP disputes, it is inconceivable that the Respondent could have registered the disputed domain names confusingly similar to the Complainant's trademark for a mere chance without actual knowledge of the Complainant and its mark and the intention to exploit such reputation by diverting traffic away from the Complainant's website.

Even assuming that the Respondent had no knowledge of the Complainant's prior mark at the time of registration of the disputed domain names (which is quite unlikely), he omitted to verify that the disputed domain names would have infringed the Complainant's earlier rights or, even worse, he verified it and deliberately proceeded with the infringing registration.

The Complainant has submitted the results of a Google search carried out regarding the term "KLARNA", all of them related to the Complainant. Should the Respondent have performed a similar search on the Internet before registering the disputed domain names, he would have easily learnt about the Complainant's activities and trademark registered and used extensively.

Under paragraph 2 of the Policy, it is the Respondent's responsibility to determine whether a domain name registration infringes or violates third party's rights. By registering the disputed domain names confusingly similar with the Complainant's well-known mark, the Respondent has violated, inter alia, the cited provision of the Policy.

Furthermore, since the Respondent registered 10 domain names, all of them consisting of the Complainant's distinctive trademark in its entirety with the addition of generic and descriptive terms, the Panel finds that the Respondent is engaged in a pattern of abusive conduct (paragraph 4(b)(ii) of the Policy).

Currently, the disputed domain names do not resolve to any active website.

UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see 3.3 WIPO Overview 3.0).

The following factors are considered when applying the passive holding doctrine:

- the degree of distinctiveness and/or reputation of the Complainant's trademark;
- the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use;
- the Respondent's concealing its identity (privacy or proxy service) or use of false contact details;
- the implausibility of any good faith use to which the disputed domain name may be put.

The Complainant has established that, before filing the Complaint, two domain names out of 10 (i.e., <klarna-ag.com> and <klarnadirect.com>) were used to resolve to a webpage with a script "Choose your bank" in German which is a direct reference to the business activities of the Complainant. Therefore, the Panel finds that by using the disputed domain names, the Respondent intentionally attempted to attract, for commercial gain, Internet users to his web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website or location or of a product or service on his website or location (paragraph 4(b)(iii) of the Policy).

Taken into account all circumstances of this case, the Panel finds that it is implausible that there is any legitimate purpose in the registration and use of the disputed domain names by the Respondent.

The Panel, thus, finds that the Complainant has discharged the burden of proof to show that the disputed domain names have been registered and are being used in bad faith (paragraph 4(a)(iii) of the Policy).

Therefore, the disputed domain names are to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **direct1-klarna.com**: Transferred
2. **klarna-ag.com**: Transferred
3. **klarnadirect.com**: Transferred
4. **kcenter-klarna.com**: Transferred
5. **klarna-deutschland.com**: Transferred
6. **klarnadata.com**: Transferred
7. **klarnacheck.com**: Transferred
8. **klarnacenter.com**: Transferred
9. **direct-klarna.com**: Transferred
10. **klarna-center.com**: Transferred

PANELLISTS

Name	Ivett Paulovics
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DATE OF PANEL DECISION	2023-04-12
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Publish the Decision
