

## Decision for dispute CAC-UDRP-105212

Case number CAC-UDRP-105212

Time of filing 2023-02-24 11:18:08

Domain names turnitinstudent.com

### Case administrator

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

### Complainant

Organization Turnitin LLC

### Complainant representative

Organization Stobbs IP

### Respondent

Name Eric Macharia Njoroge

#### 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 owns numerous trade marks worldwide for the "TURNITIN" mark ("the Mark") and provided evidence of his rights attached to the Complaint. These rights date back to 2013 and pre-exist the registration of the disputed domain name, which was acquired by the Respondent only in 2021.

#### FACTUAL BACKGROUND

Turnitin LLC ("Turnitin") – the Complainant, is an Internet-based plagiarism detection service run by the American company Turnitin, LLC, founded in 1998. It provides not only plagiarism detection services and online research integrity solutions for universities, corporations, and publishers globally, but also offers a detection service for newspaper editors, book and magazine publishers called "iThenticate".

In this respect, the Complainant is the owner of the domain name <turnitin.com>, which has been registered in 1999. It is actively used for the purposes of a global website promoting the TURNITIN brand online for over 20 years, and is extensively available worldwide through social media.

#### PARTIES CONTENTIONS

The Complainant contends 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

According to paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are shown, namely:

- i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii) the disputed domain name was registered and is being used in bad faith.

In agreement with previous UDRP Decisions, in the absence of any reply to the Complaint by the Respondent, the discussions and findings of Panel will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent.

#### **B. Identical or confusingly similar domain name**

The Panel considers that the Complainant has submitted sufficient evidence, incontestably showing not only it has rights in the trademark "TURNITIN", but that their rights in the name TURNITIN pre-date the registration of the disputed domain name.

The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's registered "TURNITIN" trademark, as it entirely contains this trademark and only adds the descriptive term "student", which is indeed associated with the Complainant's business offering and addressed audience (i.e. educational plagiarism services to students, among other audiences).

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see [section 1.8](#) of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) ("WIPO Overview 3.0")).

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

## B. Rights or legitimate interests

The burden of proof is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a prima facie case, the burden of production then shifts to the Respondent, which has then to demonstrate rights or legitimate interests in the disputed domain name.

In the present matter, the Panel finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, namely that: i) the Respondent is not commonly known under the disputed domain name, ii) nor does it have / own any registered rights on the disputed domain name ("merely registering the domain name is not sufficient to establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy", WIPO Case No. D2000-1244 and WIPO Case No. D2000-0387), iii) nor is the Respondent making a legitimate non-commercial or fair use of the disputed domain name (i.e. the disputed domain name is being used for the purposes of a website offering services identical to the Complainant's business).

In addition to what was established in the Complaint, the Panel observes that the use of a privacy service together with the use of a fake address have been considered an inference of bad faith in previous UDRP decisions. (see section 3.6, [WIPO Overview 3.0](#)).

The Panel also notes that the Respondent did not reply to the Complaint, therefore, not providing any justification, evidence or explanation as to why the Respondent would have rights or legitimate interests in the disputed domain name.

Based on all the above, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

## C. Registration and use in bad faith

The Complainant mainly states that the disputed domain name was registered primarily for the purpose of disrupting its business and that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to their 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 their website or location or of a product or service on their website or location.

The Panel agrees with the Complainant and finds that at the time of the registration of the disputed domain name, the Respondent knew and was aware of the existence of the Complainant's trademarks and activities. The disputed domain name was registered in 2021, many years after the Complainant acquired its registered trademark rights in the name TURNITIN, and, as stated by the Complainant, after it had a recognisable online presence (for over 20 years now).

As per the use of the website under the disputed domain name, this Panel confirms that the disputed domain name has been used by the Respondent for the purposes of a website providing identical services offered by the Complainant (as per evidence provided by the Complainant as well as own confirmation of this Panel, using the site "WayBack" Machine). Therefore, the Panel is of the opinion that the disputed domain name was registered and used in bad faith by the Respondent.

Additionally, to this date, the Panel notes that the disputed domain name resolves to an inactive website. The change in content and the current passive holding of the disputed domain name nevertheless qualify as use in bad faith in this case (see WIPO Case No. D2022-4200, as well as the famous *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-003).

As briefly mentioned in Section B, the Panel also observed that when the Respondent registered the disputed domain name, the Respondent adopted a privacy service in order to hide its identity and additionally used fake contact details, which both support a finding of bad faith (see section 3.6, WIPO Overview 3.0).

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy, and hence, that the disputed domain name was both registered and used in bad faith.

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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. [turnitinstudent.com](#): Transferred

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## PANELLISTS

Name	Laura Martin-Gamero Schmidt
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DATE OF PANEL DECISION 2023-04-17

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Publish the Decision

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