

Decision for dispute CAC-UDRP-105351

Case number CAC-UDRP-105351

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Domain names weldom-grp.com

Case administrator

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

Complainant

Organization WELDOM

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization clappaz michel

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 several trademarks, such as the following:

- WELDOM, French word mark n° 98732522 registered on May 11, 1998 in class 35;
 - WELDOM, international word mark n° 713643 registered on December 18, 1998 in classes 2, 3, 6, 7, 8, 9, 11, 19, 20, 21, 27 and 31;
 - WELDOM, French figurative mark n° 3860943 registered on September 22, 2011 in classes 35, 38 and 42.
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FACTUAL BACKGROUND

The Complainant is a French company specializing in the sale of products for DIY ("do it yourself"), decoration and gardening projects.

The Complainant is the owner of several trademarks for WELDOM, registered in several classes and covering various countries, including in France where the Respondent is located.

The Complainant also owns, through its parent company Groupe Adeo, the domain name <weldom.com> registered since June 17, 1998.

The disputed domain name <weldom-grp.com> was registered on January 30, 2023. According to the evidence provided by the Complainant, the disputed domain name resolved to a parking page with sponsored links and the email function of the disputed domain name has also been used. The disputed domain name currently resolves to an inactive page.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent is not identified as the disputed domain name and is thus not commonly known by the disputed domain name. Also, according to the Complainant, the Respondent has not been authorized to use the Complainant's trademark and is not related in any way with the Complainant. The Complainant finds that the disputed domain name is neither used for a bona fide offering of goods nor is it a legitimate non-commercial or fair use. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark. According to the Complainant, the Respondent registered and uses the disputed domain name in bad faith to create confusion with the Complainant's trademarks for commercial gain by using the confusingly similar disputed domain name to resolve to a parking page with commercial links and in the context of a phishing scheme.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the complainant to make out its case, and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. The standard of proof is the balance of probabilities.

Thus, for the complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

- The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

- The respondent has no rights or legitimate interests in respect of the domain name; and
- The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

Confusing similarity of the disputed domain name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of registered WELDOM trademarks, which are used in connection with the Complainant's DIY, decoration and gardening products, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name <weldom-grp.com> incorporates the Complainant's WELDOM trademark in its entirety, merely adding a hyphen and the letters "grp". In the Panel's view, these small additions do not prevent the Complainant's trademark from being recognizable within the disputed domain name (see section 1.8 of the WIPO Overview 3.0).

It is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

For these reasons, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

No rights or legitimate interests

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 name.

It is established case law that it is sufficient for the Complainant to make prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "clappaz michel". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Generally speaking, UDRP panels have found that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 WIPO Overview 3.0). In this case, the disputed domain name incorporates the Complainant's WELDOM trademark in its entirety, merely adding a hyphen and the letters "grp". In the Panel's view, this addition can be considered as referring to the abbreviation for "group". Therefore, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant and/or the Complainant's group of companies.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the WIPO Overview 3.0).

In this case, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

According to evidence provided by the Complainant, the disputed domain name resolved to a parking page containing pay-per-click ("PPC") links using terms such as "Boutique" ("shop") or "Maison" ("home"). The Panel finds that such PPC links may capitalize on the reputation and goodwill of the Complainant's mark or may mislead Internet users, which cannot be considered as a use of the disputed domain name in connection with a bona fide offering of goods or services (see section 2.9 of the WIPO Overview 3.0).

The disputed domain name currently does not resolve to an active web page, but the Complainant also provides evidence of the use of an e-mail address linked to the disputed domain name. This e-mail address has apparently been used to request a quote in an e-mail mentioning the Complainant's word and figurative marks and the address of the Complainant's registered offices. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see section 2.13 of the WIPO Overview 3.0).

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and

that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (See e.g. *Telstra Corporation Limited v. Nuclear Marshmallow*, WIPO Case No. D2000-0003; *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. D2011-2209; *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. D2001-1070). In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the WELDOM trademark at the moment it registered the disputed domain name:

- the disputed domain name incorporates the Complainant's distinctive WELDOM trademark in its entirety and combines it with a descriptive abbreviation that does nothing to avoid any confusion, quite the contrary;
- some of the Complainant's trademarks were registered more than 20 years before the registration of the disputed domain name, including in France where the Respondent is located;
- at least one e-mail sent with an address linked to the disputed domain name mentioned not only the Complainant's word mark but also the Complainant's figurative mark, logo and the address of the Complainant's registered offices.

In view of the use of the disputed domain name as described above, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or online location linked to the disputed domain name.

Moreover, given that the use of a domain name for per se illegitimate activity such as impersonation or phishing can never confer rights or legitimate interests on a respondent, such behaviour is manifestly considered evidence of bad faith (see section 3.1.4 WIPO Overview 3.0).

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being 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. **weldom-grp.com**: Transferred

PANELLISTS

Name	Flip Petillion
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DATE OF PANEL DECISION 2023-05-25

Publish the Decision
