

Decision for dispute CAC-UDRP-105389

Case number	CAC-UDRP-105389
Time of filing	2023-04-27 10:13:42
Domain names	LNLESASANPAOLO.COM

Case administrator

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

Organization	Intesa Sanpaolo S.p.A.
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Complainant representative

Organization	Intesa Sanpaolo S.p.A.
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Respondent

Name	adam senior
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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 has provided evidence of ownership of the following trademarks:

- International trademark registration n. 793367 "INTESA", granted on September 04, 2002 and duly renewed, in class 36;
- International trademark registration n. 920896 "INTESA SANPAOLO", granted on March 07, 2007 and duly renewed, in classes 9, 16, 35, 36, 41, 42;
- EU trademark registration n. 12247979 "INTESA", applied on October 23, 2013 and granted on March 05, 2014, in classes 9, 16, 35, 36, 38, 41 and 42;
- EU trademark registration n. 5301999 "INTESA SANPAOLO", applied on September 08, 2006, granted on June 18, 2007 and duly renewed, in classes 35, 36 and 38.

FACTUAL BACKGROUND

The Complainant, Intesa Sanpaolo S.p.A., is an Italian banking group founded in 2007 and with branches in a large number of countries worldwide. The Complainant has provided evidence of ownership of the following registrations for the marks "INTESA" and "INTESA SANPAOLO".

The disputed domain name was registered on 18 December 2022 and resolves to a website blocked by Google Safebrowsing.

PARTIES CONTENTIONS

COMPLAINANT

The disputed domain name is confusingly similar to the Complainant's trademark INTESA SANPAOLO and its domain names. The Complainant contends that the mark's verbal portion "INT" in the term "INTESA" is substituted with the letters "LNL" in the domain name, representing a clear example of typosquatting.

Per the Complaint, the Respondent is not known by the disputed domain name. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way and that Respondent has no rights or legitimate interests in respect of the disputed domain name. The use of the domain name, in relation to a website blocked by Google Safebrowsing, cannot be considered as a bona fide offering of goods or services under the Policy, nor does the Respondent use the domain name for a legitimate or non-commercial fair use, per the Complainant.

As regards the bad faith of the Respondent, the disputed domain name includes the distinctive trademark INTESA SANPAOLO. It is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Furthermore, the Complainant argues that the Respondent intentionally attempted to divert Internet users by creating a likelihood of confusion, and that the Respondent primarily intended to disrupt the Complainant's business by registering the disputed domain name. The Complainant further submits that the main purpose of the Respondent was to use the website for "phishing" financial information in an attempt to defraud the Complainant's customers. The Complainant finds no plausible legitimate use of the disputed domain name.

Finally, the Complainant's Representative addressed a cease-and-desist letter to the Respondent, which remains unanswered.

RESPONDENT

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

Notwithstanding the fact that no Response has been filed, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

(i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has

rights; and

(ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark for the Complainant to succeed.

The Complainant, Intesa Sanpaolo S.p.A., is an Italian banking group founded in 2007 and with branches in a large number of countries worldwide. The Complainant has provided evidence of ownership of the following registrations for the marks "INTESA" and "INTESA SANPAOLO":

International trademark registration n. 793367 "INTESA", granted on September 04, 2002 and duly renewed, in class 36;
International trademark registration n. 920896 "INTESA SANPAOLO", granted on March 07, 2007 and duly renewed, in classes 9, 16, 35, 36, 41, 42.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name".

Also, according to section 1.7 of the WIPO Overview 3.0, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

The Panel is of the view that the portion "INT" in the term "INTESA" is substituted with the letters "LNL" in the domain name, representing a clear example of typosquatting. Overall, the Complainant's earlier trademarks are easily recognizable within the disputed domain name. The substitution is not important enough to distinguish between the earlier trademarks of the Complainant and the disputed domain name, and does not prevent a finding of confusing similarity with the Complainant's trademarks.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark.

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the respondent's rights or legitimate interests in the disputed domain name:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview 3.0, which states: "[...] 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 evidence on record does not show that the Respondent was commonly known, as an individual or an organization, by the disputed domain name.

The Panel also accepts, in the absence of a rebuttal from the Respondent, that the Respondent uses the Complainant's trademarks in the disputed domain name without authorization from the Complainant.

Equally, the Panel finds that the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name. The fact that the content associated with the disputed domain name is blocked by Google Safebrowsing is, in the opinion of the Panel, a clear indicator that the domain name is not used in a legitimate noncommercial or fair manner.

Therefore, the Panel concludes that the Respondent has no right or legitimate interests in the disputed domain name and therefore finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registration and Use in Bad faith

For the purpose of Paragraph 4(a) (iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the domain names in bad faith:

- (i) circumstances indicating that the holder has registered or has 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 the holders documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder has 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 the holder has engaged in a pattern of such conduct; or
- (iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's 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 the holder's website or location.

The Panel finds the third and fourth elements of Paragraph 4(b) of the Policy applicable in the present case. The evidence on the record shows that the Respondent was certainly aware of the existence of the Complainant and of the rights of the Complainant, and that the Respondent, by registering and using the disputed domain name has intentionally attracted internet users by creating a likelihood of confusion with the Complainant's trademark.

Given the long-lasting reputation of the Complainant's marks, the Respondent cannot have ignored the Complainant's earlier rights, neither can the Respondent have ignored that, when registering the domain name, they would do so in violation of the Complainant's earlier rights.

In addition, the current use of the disputed domain name by the Respondent amounts to bad faith, given the fact that the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name. Whether the Respondent used the disputed domain name for phishing purposes, or planned or prepared to do so, the Panel finds that the Respondent acted in bad faith. The Respondent registered the domain name because in all probability he knew of the Complainant and the type of services offered by the Complainant and tried to attract Internet users for commercial gain by "spoofing" and "phishing".

As seeking customer services' help in the banking sector is ordinary, unfortunately so are phishing and fraud attempts. The Panel concludes that the Respondent purportedly registered the disputed domain name in an attempt to defraud the Complainant's consumers, thereby disrupting the Complainant's business.

The Respondent's lack of reply to the Complaint also corroborates this finding of the bad faith, and so does the Respondent's absence of Response to the Complainant's Representative cease-and-desist letter.

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith, and therefore finds that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LNLESASANPAOLO.COM**: Transferred

PANELLISTS

Name	Arthur Fouré
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DATE OF PANEL DECISION **2023-06-08**

Publish the Decision
