

## Decision for dispute CAC-UDRP-105513

Case number CAC-UDRP-105513

Time of filing 2023-06-07 11:01:22

Domain names klarna-apps.net

### Case administrator

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

### Complainant

Organization Klarna Bank AB

### Complainant representative

Organization SILKA AB

### Respondent

Name Susanne Eiberle

#### 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 several trademarks consisting of the term "KLARNA" including:

Mark	Registration No.	Registration Date	Class(es)
KLARNA (figurative) (EU)	009199861	December 06, 2010	35, 36
KLARNA (word) (US)	4582346	August 12, 2014	35,36,42,45
KLARNA (word) (IR)	1066079	December 21, 2010	35,36

Further, the Complainant operates its business using the official website [www.klarna.com](http://www.klarna.com).

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#### FACTUAL BACKGROUND

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

The Complainant, founded in Stockholm in 2005, is one of Europe's largest banks. It operates an e-commerce and banking business. The Complainant has more than 5,000 employees with 150,000,000 active customers across 500,000 merchants in 45 countries. More than 2 million transactions per day are facilitated by the Complainant.

On March 2, 2023, the Respondent Susanne Eiberle, an individual located in Germany, registered the disputed domain name <Klarna-apps.net>.

The disputed domain name does not resolve to an active website. There are active MX records associated with the disputed domain name, meaning that emails can be sent from an id ending with "@klarna-apps.net".

According to the information on the case file, the Registrar confirmed that the Respondent is the current registrant of the disputed domain name, and that the language of the registration agreement is English.

The facts asserted by the Complainant are not contested by the Respondent because no Response was filed.

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#### 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

##### **THREE ELEMENTS COMPLAINANT MUST ESTABLISH UNDER THE POLICY**

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that a disputed domain name should be transferred or cancelled:

- (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 has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

#### **(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S RIGHTS**

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term KLARNA for banking, ecommerce and associated products and services, and more. Such trademark rights were created and registered prior to March 2, 2023, the creation date of the disputed domain name. A nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Accordingly, the Panel finds that the Complainant possesses rights in its KLARNA trademark such that it has standing under the Policy.

UDRP panels have held that where the asserted trademark is recognizable within a disputed domain name, the addition of a descriptive, generic or geographical term does not prevent a finding of confusing similarity. In the present case, the disputed domain name consists of the KLARNA trademark reproduced in its entirety, with the addition of the generic term "apps" generally understood to mean "applications", especially as may be downloaded to a mobile device. The trademark KLARNA remains prominent in the disputed domain name, and its combination with "apps" infers that the domain name is somehow connected with the owner of the KLARNA trademark, a well-established brand in the banking and ecommerce sector.

The TLD may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

The inclusion of the term "apps" and use of the TLD ".net" in the disputed domain name do not avoid confusion with the Complainant's KLARNA trademark. Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain name is confusingly similar to Complainant's mark.

#### **(B) RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME**

The second element of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests in the disputed domain name. The generally adopted approach, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

However, the burden of proof still remains with the Complainant to make out its prima facie case on a balance of probabilities; see, for example, [CAC Case No. 102263](#), Intesa Sanpaolo S.p.A. v Ida Ekkert. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the domain name in issue. Simply establishing that the complainant also has rights in the domain name in issue is insufficient.

In the present case, the Complainant asserts that the Respondent is not in any way affiliated with, nor authorized by, the Complainant to use the KLARNA mark. Further, the disputed domain name did not resolve to any active content. This has not been contested by the Respondent. Instead, the Respondent has not responded in any form and thus has failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

The configuration of the disputed domain name, namely the terms "klarna" and "apps" separated by a hyphen is already in use by the Complainant in an almost identical form at [www.klarna.com/us/klarna-app/](http://www.klarna.com/us/klarna-app/). This pre-existing use of "klarna-app" and the inferences that – by registering the disputed domain name – the Respondent was seeking to create the impression of an association with the Complainant. As such association does not exist, the Panel concludes that there is nothing that could be interpreted as bestowing rights or legitimate interests on the Respondent. Further, no plausible legitimate purpose for the disputed domain name is apparent. Accordingly, the Complainant has sufficiently made out its case on the second element of the Policy. Thus, the burden of proof is shifted to the Respondent to rebut the Complainant's case. Here, because the Respondent has not participated in these proceedings, there is no such rebuttal to consider and the Complainant prevails.

The Panel therefore concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the disputed domain name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

#### **(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME**

The third element requires Complainant to show that the disputed domain name has been registered and used in bad faith under

paragraph 4(a)(iii) of the Policy. *Hallmark Licensing, LLC v. EWebMall, Inc.*, [WIPO Case No. D2015-2202](#) (“The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.”).

Further, Paragraph 4(b) of the Policy sets out four circumstances, in particular but without limitation, any one of which may be evidence of the registration and use of a domain name in bad faith. The four specified circumstances are:

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

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad faith in general (ie under paragraph 4(a)(iii) of the Policy) for the following reasons:

1. The Complainant’s KLARNA trademark is distinctive and enjoys considerable reputation within the banking and ecommerce industry, and for Complainant’s online payment services. Prior panels have concluded that the KLARNA trademark is well-known. According, it is therefore reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant’s trademarks and that they registered the disputed domain name with knowledge of the Complainant’s trademarks.
2. There is no credible evidence that the Respondent is commonly known by the disputed domain name and the Complainant asserts that the Respondent has never been affiliated with nor authorized by the Complainant to use the Complainant’s trademark(s) and/or register the disputed domain name. Nor is there any business or other association between the Complainant and the Respondent.
3. There is compelling evidence of targeting by Respondent. The disputed domain name comprises Complainant’s distinctive KLARNA mark, with the addition of the related term “apps”, apparently meant to represent the mobile apps with which the Complainant can be closely and relevantly associated. The disputed domain name does not resolve to any active content that could potentially evidence an alternative purpose.
4. The existence of active MX records indicates that the Respondent plans to send suspicious e-mails using the e-mail ID ending with “@klarna-apps.net”. Previous panels have found such plans to be evidence of bad faith. See, for example *CMA CGM v. Domains By Proxy, LLC / Jeanne Dedit*, WIPO-D2021-2733 (“This circumstance, along with the DNS setup of the Domain Name (with active MX records) and the composition of the Domain Name, lead the Panel to consider that the Domain Name could be used to deceive Internet users by impersonating the Complainant. In this instance, the Domain Name constitutes a potential threat hanging over the head of the Complainant.”). In this present proceeding, the Panel finds it more likely than not that the disputed domain name is intended to be used for deceptive purposes in connection with an associated email ID which can be used to impersonate the Complainant.
5. The non-active use of the disputed domain name in this case satisfies the doctrine of passive holding considering all of the circumstances of the case because (i) the Complainant’s trademark is distinctive and has a strong reputation in its sector – noting the Complainant has 150 million active customers and over 2 million transactions per day, (ii) the Respondent failed to respond to Complainant’s cease and desist letter and reminder or these proceedings and thus has provided no evidence of actual or contemplated good-faith use, (iii) it is impossible to conceive of any plausible actual or contemplated good faith use of the disputed domain name by the Respondent in this case.
6. As a final point, the Panel may draw a negative inference from Respondent’s silence though these proceedings.

In light of the above analysis, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and is being used in bad faith, and thus has satisfied the requirements under paragraph 4(a)(iii) and 4b. of the Policy.

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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. **klarna-apps.net**: Transferred

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## PANELLISTS

Name	Claire Kowarsky
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DATE OF PANEL DECISION 2023-07-08

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Publish the Decision

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