

Decision for dispute CAC-UDRP-105627

Case number CAC-UDRP-105627

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Domain names adeccojobs.com

Case administrator

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

Complainant

Organization Adecco Group AG

Complainant representative

Organization BRANDIT GmbH

Respondent

Organization Hong Kong Domain

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 registered owner of a series of trademarks for ADECCO registered in various jurisdictions around the world.

Three of those trademarks are:

- the Swiss trademark ADECCO, registered with the Swiss Federal Institute of Intellectual Property, number P-431224, registered on September 26, 1996 in classes 35, 41 and 42;
- the International trademark ADECCO, No.666347, registered with the World Intellectual Property Organization on October 17, 1996, in classes 35, 41 and 42; and
- the Hong Kong trademark ADECCO No. 199904349AA, registered on April 12, 1999 in classes 35, 41 and 42.

FACTUAL BACKGROUND

The Complainant is a prominent workforce solutions company based in Switzerland which handles general recruitment through to specialist industry placements and a wide range of other employment services. It operates world-wide. The Complainant is the owner of the trademark ADECCO which is registered in jurisdictions all over the world. It also has an online presence via its official

websites including www.adecco.com and social media platforms.

The Complainant has become aware that the Respondent has wrongly copied its ADECCO trademarks by registering and using the disputed domain name <adeccojobs.com> which reflects the ADECCO trademark and adds the word "jobs", which invokes the principal activity of the Complainant, namely employment services. The Respondent has caused that domain name to resolve to a "Pay-Per-Click" page on the internet which presumably generates income for the Respondent when internet users click on the links displayed on the page. The Respondent has gone so far in this activity as to refer on its site to some advertised positions as "ADECCO Jobs." The Complainant has become concerned that as well as this activity probably producing illegal income for the Respondent by using the Complainant's name and trademark, it also generates confusion among internet users as to whether the content of the Respondent's webpage is official and legitimate content provided by the Complainant or not.

The Complainant has registered its objection to this conduct by a cease-and-desist letter to which the Respondent has not replied. Hence the Complainant has brought this proceeding to have the disputed domain name transferred to itself so that an end can be brought to the Respondent's misleading and damaging conduct.

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PARTIES CONTENTIONS

COMPLAINANT

The Complainant is a prominent company engaged in the business of job placements and the provision of related services. It is the owner of the ADECCO trademark which is registered in many jurisdictions throughout the world, including in Hong Kong, which is apparently the domicile of the Respondent. It also has a prominent online presence via its official websites and social media platforms.

The Respondent registered the domain name <adeccojobs.com> ("the disputed domain name") on November 20, 1997. The domain name includes the Complainant's prominent and well-known trademark ADECCO and the word "jobs". Thus, the Respondent has registered a domain name which includes a prominent trademark and an activity, namely "jobs", which is the main activity of the trademark owner's business.

The domain name is confusingly similar to the ADECCO trademark because it includes the trademark itself and the principal activity for which it is used, namely the provision of information and other services about jobs.

Moreover, several of the Complainant's trademarks for ADECCO were registered prior to the date on which the Respondent registered the disputed domain name. Indeed, when the domain name was registered on November 20, 1997, it was a year after one of the earliest registrations of the ADECCO trademark.

The Respondent has no rights and legitimate interests in respect of the disputed domain name.

That is because the Complainant has never given the Respondent permission or authority to register or use the domain name or to use the ADECCO mark in any way. The Respondent's intention was clearly to refer to the Complainant and its trademark and business activity and to impersonate the Complainant and suggest that it has the Complainant's sponsorship or endorsement, which it does not.

The Respondent is not commonly known by the disputed domain name. It also does not appear to own any registered trademark or have any other right to use the ADECCO name. Nor does any other party appear to have any trademark interests in the term <adeccojobs.com> or any similar term.

The Respondent has caused the domain name to resolve to a "Pay-Per-Click" page where the sponsored links clearly refer to the Complainant and its business activities, such as "Adecco jobs" and presumably for financial reward. This is done by creating the likelihood of confusion with the Complainant's ADECCO trademark as to the legitimacy and genuineness of the Respondent's "Pay-Per-Click" page.

Moreover, the Respondent has used a privacy shield service to mask its identity on the public WHOIS register and has acted in a deceptive manner to give the false impression that it is the Complainant or has been authorised by the Complainant to register and use the domain name.

All of the foregoing considerations show that the Respondent has no rights or legitimate interests in the disputed domain name.

The disputed domain name was registered and is being used in bad faith.

With respect to Registration in bad faith, the Respondent registered the domain name on November 20, 1997, a year after one of the earliest registrations by the Complainant of the ADECCO mark. By that time, the Complainant was well-established and commercially very active and for that reason the Respondent must have been aware of the Complainant by the time it registered the domain name.

The domain name blatantly incorporates the Complainant's well-known trademark and its principal activity, namely the provision of

services relating to jobs. Thus, it is clear that the Respondent was directly targeting the Complainant.

With respect to bad faith use, the domain name resolves to the "Pay-Per-Click" page, presumably to the financial benefit of the Respondent. Thus, the Respondent has used the domain name to generate confusion among internet users as to the legitimacy of the "Pay-Per-Click" page, and in doing so simply relies on the goodwill of the Complainant and its good name and the guesswork of internet users as to whether they have arrived at a legitimate online site of the Complainant or not.

Moreover, the Respondent has ignored a cease-and-desist letter from the Complainant calling on it to stop its misleading and improper conduct. The use by the Respondent of a privacy shield to conceal its identity also indicates bad faith.

The entire conduct of the Respondent with respect to the use of the domain name shows deception and dishonesty and brings the case easily within Paragraphs 4 (a)(iii) and 4 (b) of the Policy.

The Complainant has also cited several prior UDRP decisions in support of its contentions.

For all of these reasons the Complainant submits that the disputed domain name has been registered and used in bad faith.

RESPONDENT

Respondent did not file a Response in this proceeding.

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

DISCUSSION AND FINDINGS

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the CAC Supplemental Rules.

A. Administrative compliance

By notification dated July 17, 2023 and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that the Complaint did not sufficiently identify the Respondent or provide sufficient information to enable it to be contacted to allow CAC to send the Complaint to the Respondent. The notification invited the Complainant to have regard to the Registrar's verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the domain name holder. On July 21 2023, the Complainant filed an Amended Complaint and the CAC determined on July 24, 2023 that the Complaint should be admitted to proceed further in the

Administrative Proceeding.

The Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the Rules, the administrative deficiencies have been corrected and that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

B. Substantive matters

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

In that regard, the Panel also notes that the onus is on the complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The 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 domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

(a) Identical or Confusingly Similar

The first question that arises is whether the Complainant has a trademark or service mark on which it may rely in this proceeding. The Complainant has adduced evidence that the Panel accepts that there are several trademarks for ADECCO that have been registered by the Complainant in various jurisdictions. The Panel has examined all of the evidence relating to the Complainant's trademarks for ADECCO, and finds they are in order and that they show the Complainant is the registered owner of the ADECCO mark and was so prior to the registration by the Respondent of the disputed domain name. The Panel will take all of those trademarks into account, but it is not necessary to specify all of them in this decision. The Panel will specify only three such trademarks, the first two because they show that the Complainant had at least two trademark registrations for ADECCO before the Respondent registered the disputed domain name and the third because it was registered in Hong Kong, which appears to be where the Respondent is domiciled.

Those three trademarks are:

- the Swiss trademark ADECCO, registered with the Swiss Federal Institute of Intellectual Property, number P-431224, registered on September 26, 1996 in classes 35, 41 and 42;
- the International trademark ADECCO, No.666347, registered with WIPO on October 17, 1996, in classes 35, 41 and 42; and
- the Hong Kong trademark ADECCO No. 199904349AA, registered on April 12, 1999 in classes 35, 41 and 42.

It will be seen therefore that the first two trademarks were registered before the disputed domain name was registered, which was on November 20, 1997.

That evidence shows that the Complainant has rights in the specified trademarks as it is well recognized that trademark registrations with national and international authorities create rights in those trademarks within the meaning of the Policy and give the respective registrants of those trademarks standing to bring proceedings under the UDRP.

The second question that arises is whether the disputed domain name <adeccojobs.com> is confusingly similar to the ADECCO trademark. The Panel finds that it is confusingly similar to the ADECCO trademark for the following reasons. The domain name includes the entirety of the ADECCO trademark and an extra word, namely "jobs". Thus, the domain name contains the exact trademark of the Complainant and an additional word that describes the Complainant's principal activity, namely jobs and the provision of information and services about them. It is clear therefore that the domain name has been inspired by and is an attempt to copy the ADECCO trademark of the Complainant and to identify the Complainant itself by invoking the trademark and the principal nature of its business, namely dealing with jobs, with which the Complainant is associated and was so at the time the domain name was registered. Accordingly, the domain name would inculcate in the mind of any internet user who saw it that it was in fact the trademark of the Complainant and was being used with the knowledge and approval of the Complainant. It should also be said that the foregoing considerations have been accepted and applied in many prior UDRP decisions.

It should also be noted that the domain name is registered with a “. com” suffix. It is regular domain name law and practice to recognise that such additions are features of all domain names and do not make out a ground for denying a finding that the domain name is identical or confusingly similar to the relevant trademark.

Finally, taken as a whole, the disputed domain name would convey to the objective bystander that it related to the activities of the Complainant, giving rise to inevitable confusion as to whether it is official and genuine or not.

As the Complainant rightly submits, the views just expressed are consistent with decisions by prior UDRP panels.

Accordingly, the Panel finds that the domain name is confusingly similar to the ADECCO trademark in which the Complainant has rights and it has thus proved the first of the three elements that it must establish.

(b) 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.

But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you [respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests and that when such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Respondent has not taken part in this proceeding and therefore has not proved or tried to prove any of the grounds set out above to show that it has a right or legitimate in the domain name and the Panel therefore has to look at what is said by the Complainant to make out its prima facie case.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name.

That prima facie case is made out from the following considerations.

- The Complainant has clearly established its rights in the ADECCO mark as the registered owner of the trademark.
- The evidence of the Complainant is that the Respondent is not related in any way to the Complainant’s business, is not affiliated with the Complainant or authorized by it in any way to use the ADECCO trademark and does not carry out any activity for, nor has any business with, the Complainant.
- The evidence shows that the Respondent is not commonly known by the domain name under paragraph 4(c)(ii) of the Policy. It also does not appear to own any registered trademark or have any other right to use the ADECCO name. Nor does any other party appear to have any trademark interests in the term.
- The essence of this proceeding is that the Respondent has taken the Complainant’s name and trademark, pretended that it is the Complainant and used the domain name to try to make money by pretending that it can and will provide the services of the Complainant in the employment field. The Respondent has caused the domain name to resolve to a “Pay-Per-Click” page where the sponsored links clearly refer to the Complainant and its business activities, such as “Adecco jobs” and presumably for financial reward. This is done by creating the likelihood of confusion with the Complainant’s ADECCO trademark as to the legitimacy of the Respondent’s “Pay-Per-Click” page. As submitted by the Complainant, the Respondent’s intention was clearly to refer to the Complainant and its trademark and business activity and to impersonate the Complainant and suggest that it has its sponsorship or endorsement, which it does not.
- Moreover, the Respondent has used a privacy shield service to mask its identity on the public WHOIS register and has acted in a deceptive manner to give the false impression that it either is the Complainant or has been authorised by the Complainant to register and use the domain name.

None of this conduct of the Respondent is bona fide or legitimate and none of it comes within any of the criteria for a right or legitimate interest in a domain name that are set out in paragraph 4(c) (i) – (iii) of the Policy. Nor is there any evidence to show or suggest that the Respondent could in any other way show a right or legitimate interest in the domain name. The facts, therefore, give rise to the prima facie case having been made out by the Complainant.

As the Complainant rightly submits, it has been held by previous UDRP panels that such conduct as the Respondent has exhibited

must lead to the rejection of any suggestion that it would constitute a right or legitimate interest by the Respondent in a domain name.

The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default. Accordingly, the prima facie case has not been rebutted and the Complainant has made out the second of the three elements that it must establish.

(c) Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive.

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.

Before proceeding further, the Panel notes and has particularly taken into account that the disputed domain name was registered a considerable time ago and in fact on November 20, 1997 and that no challenge to its validity had apparently been made until the present proceeding. In those circumstances the Panel has carefully weighed up whether it can be said on the balance of probabilities after such a period of time that the Respondent registered and has used the domain name in bad faith. It is not fatal to this proceeding that some 26 years have passed by, and if the Respondent considered that the claim has been barred by laches or delay or that it had suffered some prejudice by the passage of time, it could have taken part in the proceeding and mounted that argument. It has not however done so, and the Panel is of the view that taking all the evidence into account, it has been established that the domain name was registered and used in bad faith. In that regard, the Panel takes particular note that when the domain name was registered, two of the Complainant's trademarks for ADECCO had already been registered and that the domain name included the word "jobs", making it clear that it was registered to target the Complainant.

Turning in more detail to the specific issues relating to bad faith, there is no need to repeat all of the details set out already, but in general the conduct of the Respondent up to and including the time when it registered the domain name clearly amount to bad faith registration and all of its conduct since the registration of the domain name clearly amount to bad faith use.

That is so for the following reasons.

First, the Respondent must have been aware of the existence of the Complainant and its reputation when it registered the disputed domain name, because the Respondent chose the name of the domain name itself and added to the Complainant's trademark the word "jobs", showing that it knew the principal activity of the Complainant and wanted to copy it and trade on it. The Respondent therefore clearly had actual notice of the Complainant and its trademark and that is a ground by itself for finding bad faith registration.

Secondly, in registering the domain name deceptively and without any authority to do so, the Respondent must be taken to have created a likelihood of confusion in registering it, with the intention of attracting current and potential customers of the Complainant looking for its services and doing so in this misleading manner. Accordingly, that conduct brings the case squarely within the provisions of paragraph 4(b) (iii) because the Respondent must have registered the domain name primarily for the purpose of disrupting the business of a competitor, as the more business the Respondent gained by its subterfuge, the more business the Complainant lost.

Thirdly, the Respondent's conduct brings the case squarely within the provisions of paragraph 4(b) (iv) of the Policy because the Respondent must have intentionally attempted to attract, for commercial gain, Internet users to its website by creating confusion with the Complainant's ADECCO mark as to whether or not the Complainant was the source of the extensive information about jobs that the Respondent included on its website under the guise of the Complainant's own trademark. Clearly, this shows bad faith use of the domain name.

Fourthly, as noted, the domain name blatantly incorporates the Complainant's well-known trademark and its principal activity, namely the provision of services relating to jobs. In this regard, it should be noted again that two of the Complainant's trademarks relied on were registered by it prior to the registration of the disputed domain name.

They are:

- the Swiss trademark ADECCO, registered with the Swiss Federal Institute of Intellectual Property, number P-431224, registered on September 26, 1996 in classes 35,41 and 42;
- the International trademark ADECCO, No.666347, registered with the World Intellectual Property Organization on October 17, 1996, in classes 35, 41 and 42.

Thus, it is clear that the Respondent was directly targeting the Complainant. It is a serious act of bad faith to use a trademark owner's trademark to target the trademark owner, which is what the Respondent has done.

Fifthly, and as has also been noted, the domain name resolves to a "Pay-Per-Click" page, presumably to the financial benefit of the Respondent. Thus, it is apparent that the Respondent has used the domain name to generate confusion among internet users as to the legitimacy of the "Pay-Per-Click" page, and in doing so simply relies on the goodwill of the Complainant and its good name to attract interest and the guesswork of internet users as to whether they are at a legitimate online site of the Complainant or not. In essence, the Respondent has taken the Complainant's name and trademark, set about misleading internet users by pretending that it is the Complainant and sought to make money by pretending it can provide the services provided by the Complainant. All of such conduct amounts clearly to bad faith registration and use of the domain name.

Moreover, the Respondent has ignored a cease-and-desist letter from the Complainant calling on it to stop its misleading and improper conduct showing further bad faith. The use by the Respondent of a privacy shield to conceal its identity also indicates bad faith.

The entire conduct of the Respondent with respect to the registration and use of the domain name shows deception and dishonesty and brings the case within the provisions of the Policy relating to bad faith registration and use.

Finally, in addition to the specific indicia set out in the Policy and having regard to the totality of the evidence, the Panel finds that, in view of Respondent's registration of the disputed domain name using the ADECCO mark and adding to it the word "jobs" and in view of the conduct that Respondent engaged in when using the domain name, Respondent registered and used it in bad faith within the generally accepted meaning of that expression.

As the Complainant rightly submits, such conduct of the Respondent has been held by previous UDRP panels to constitute bad faith registration and use.

Accordingly, the Complainant has shown the third of the three elements that it must establish and is entitled to the relief that it seeks.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **adeccojobs.com**: Transferred

PANELLISTS

Name	Neil Brown
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DATE OF PANEL DECISION **2023-08-21**

Publish the Decision
