

Decision for dispute CAC-UDRP-105704

Case number **CAC-UDRP-105704**

Time of filing **2023-08-28 12:10:41**

Domain names **aquila-group.com**

Case administrator

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

Complainant

Organization **Aquila Capital Holding GmbH**

Complainant representative

Organization **Dr Ruben A. Hofmann (Heuking Kühn Lüer Wojtek Law Firm)**

Respondent

Name **Carla Maia**

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 following trademarks:

1. German wordmark No. 30120803 AQUILA® filed on March 29th, 2001 and registered on June 1st, 2001
2. European wordmark No. 002569507 AQUILA® filed on February 05th, 2002 and registered on April 10th, 2004 at classes 09, 35, 36, 38 & 41.

FACTUAL BACKGROUND

FACTS PROVIDED BY THE COMPLAINANT:

The Complainant is the parent company of the Aquila Group, an investment company focused on the development and management of essential real assets. The Aquila Capital brand comprises companies for alternative investments and real asset investments as well as sales, fund management and service companies of the Aquila Group.

The Complainant is the owner of the trademark AQUILA®.

The disputed domain name <**aquila-group.com**> (hereinafter, the “Disputed Domain Name”) was registered on November 24th, 2021 by Carla Maia based in Portugal and it currently resolves to an inactive page showing the following advice: “account has been suspended”.

According to Complainant’s non-contested allegations, the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name and he is not related in any way to the Complainant’s business.

For the purpose of this case, 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 Respondent did not reply to the Complaint.

PARTIES CONTENTIONS

COMPLAINANT:

First element: Similarity

The Complainant confirms that the Disputed Domain Name <**aquila-group.com**> is confusingly similar to its trademark AQUILA®.

The Complainant states that the addition of the word "group" gives visitors to the website the impression that information about the Complainant's company or its affiliated companies can be found on the website under the domain "aquila-group.com". In this regard, Complainant indicates that the lack of information at the website creates the impression that the site is operated by the Complainant. Furthermore, the Complainant contends that the addition of the gTLD “.com” is of mere generic character and therefore can be disregarded.

Second element: Rights or legitimate interest

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and he is not related in any way with the Complainant. In addition, the Complainant argues that the Respondent is neither commonly known by the Disputed Domain Name nor has the Complainant found any indications with respect to a connection of the Respondent and the domain name “aquila”.

The Complainant asserts that if the Respondent would have traded under the name “AQUILA”, the Complainant and its predecessors would have become aware of such, as the Complainant strongly pursues any misuse of the name and trademark. Instead, the Respondent tried to generate attention for his website, using the fame of the Complainant’s trademark and inherent goodwill to attract Internet traffic. In accordance with the Complainant, this does not constitute legitimate, non-commercial or fair use.

Third element: Bad faith

The Complainant contends that the Respondent registered and uses the Disputed Domain Name in bad faith due to the following:

1. “AQUILA” is a famous trademark, which is very attractive for domain grabbers, as much traffic on the internet will be directed to the domain “aquila-group.com” by search engines etc. This is the sole reason the Respondent registered and uses the Disputed Domain Name in question.
2. The Complainant needs the Disputed Domain Name “aquila-group.com” to reflect its business worldwide and to fight dilution of its famous trademarks by third party’s use of the trademarks.
3. The Disputed Domain Name was not registered to refer to the Respondent's business or own products, but only to attract Internet users to this website for commercial purposes by creating a likelihood of confusion with the Complainant's trademark.
4. The Respondent obviously had knowledge of his illegal use of the Disputed Domain Name. This is clear from the fact that the Respondent initially presented content on the website. The originally displayed contents of the website were deleted in response to the contact attempts made by the Complainant. Since then, the website under the Disputed Domain Name just shows the advice that the “account has been suspended”.
5. The fact that the Respondent did not respond to any contact attempt by the Complainant shows that the Respondent has no bona fide interest in using the trademark. Otherwise, he would have informed the Complainant of the reasons why he would be entitled to use the Disputed Domain Name for his own purposes.

RESPONDENT

Respondent did not reply to the Complaint.

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 failed to show that 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

It is a standard practice that respondent's default/failure to respond to the Complainant's contentious does not automatically result in the complaint succeeding. Therefore, the Panel has the obligation to review the facts and evidence provided by the Complainant to confirm if Complainant's allegations should prevail.

See paragraph 4.3. of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0").

In light of the above, the Panel has proceeded to review the Complainant's allegation using the applicable standard of proof in UDRP cases which is focused on the "balance of probabilities" or "preponderance of the evidence" and has reached the following conclusions:

THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE TRADEMARK AQUILA® OF THE COMPLAINANT.

The Uniform Domain Name Dispute Resolution Policy (the "Policy") in its Paragraph 4(a)(i) indicates the obligation of Complainant to demonstrate that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

The Complainant has submitted evidence showing ownership over the German No. 30120803 AQUILA® filed on March 29th, 2001 and registered on June 1st, 2001 at class 36. Furthermore, the Complainant is also the owner of the European wordmark No. 002569507 AQUILA® filed on February 05th, 2002 and registered on April 10th, 2004 at classes 09, 35, 36, 38 & 41.

From the Panel's perspective, the Disputed Domain Name <aquila-group.com> is composed of the trademark "AQUILA" with the addition of the generic term GROUP - preceded by a hyphen. Previous Panels have confirmed that where the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms would not prevent a finding of confusing similarity under the first element (see paragraph 1.8 WIPO Overview 3.0).

Furthermore, the addition of the Top-Level Domain Name in a domain name (.com for the case at hand) is considered as a standard registration requirement and, therefore, it should be disregarded under the first element confusing similarity test.

See paragraph 1.11 of WIPO Overview 3.0.

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.

RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME.

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The generally adopted approach by UDRP panels, 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 WIPO Jurisprudential Overview, version 3.0., paragraph 2.1).

The Complainant indicates that the Respondent is not affiliated nor authorized in any way to use the trademark **AQUILA®**. Furthermore, the Complaint argues that it does not carry out any activity for, nor has any business with the Respondent. Finally, the Complainant has mentioned that the Respondent tried to generate attention for his website, using the fame of the Complainant's trademark and inherent goodwill to attract Internet traffic. In accordance with the Complainant, this does not constitute legitimate, non-commercial or fair use.

From the information provided by Complainant, there is no evidence or reason to believe that the Respondent (as individual, business or other organization) has been commonly known by the Disputed Domain Name. The Respondent's name "Carla Maia" provided in the Registrar's verification is all what it links the Disputed Domain Name with the Respondent. Absent of any other evidence such as a personal name, nickname or corporate identifier, the Panel is of the opinion that the Respondent is not commonly known by the Disputed Domain Name.

The Complainant also mentioned that website associated with the Disputed Domain Name resolves to an inactive website showing the following advice: "account has been suspended". Different Panels have confirmed that the lack of content at the Disputed Domain Name can be considered as a finding that Respondent does not have bona fide offering of goods and services (see, for example, Forum Case No. FA 1773444, Ashley Furniture Industries, Inc v. Joannet Macket/JM Consultants).

The fact that Respondent did not reply to the Complaint gives an additional indication that Respondent lacks rights or legitimate interest since Respondent did not provide with evidence of the types specified in paragraph 4 (c) of the Policy, or of any circumstances, giving rise to rights or legitimate interests in the Disputed Domain Name.

Therefore, the Panel 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.

THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH IN ACCORDANCE WITH THE POLICY.

Paragraph 4(a)(iii) of the Policy indicates that Complainant must assert that the Respondent registered and is using the Disputed Domain Name in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Respondent has registered or acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed 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 Respondent has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the Disputed 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.

At his Complainant, the Complainant indicated that "AQUILA" is a famous trademark. Furthermore, the Complainant mentioned that the Disputed Domain Name was not registered to refer to the Respondent's business or own products, but only to attract Internet users to this website for commercial purposes by creating a likelihood of confusion with the Complainant's trademark.

To support his argument about the famous status of the trademark "AQUILA", the Complainant submitted the following evidence: i) copies of the trademark certificates, ii) copy of a German Company's extract issued by the Commercial Register in Hamburg, Germany showing the legal existence of Complainant and iii) internal Group Structure chart showing that there are many entities forming the Aquila Group.

Other than those documents, the Complainant did not submit any additional evidence to confirm the well-known status of its trademark **AQUILA®**.

Past Panels have indicated that the status of well-known or notoriety of a trademark should be confirmed by the supporting evidence. See for instance WIPO Case Nr. D2019-2055 Terracon Consultants, Inc vs. Steven Dye, Off the Wall where the Panel indicated:

"...

While Complainant claims that it was well known at the time Respondent registered the disputed domain name, the evidence before the Panel is lacking in that regard. To be sure, conclusory allegations of notoriety that are unsubstantiated with specific evidence are entitled to little or no weight".

This view is also supported by different previous UDRP Panels such as UDRP CAC Case Nr. 103929 ("... In a UDRP proceeding, a

Complainant is required to prove its allegations even if the Respondent fails to submit a response. Therefore, for the purpose of this decision, the Panel cannot consider the trademark HUAWEI as one enjoying international reputation. The Panel cannot even consider that the HUAWEI trademark is highly distinctive since the Complainant failed to submit any evidence in this regard. Thus, in evaluating whether the Respondent acted in bad faith when registering and using the disputed domain name, the Panel shall consider the HUAWEI trademark endowed with a normal degree of distinctive character”), UDRP CAC Case No.104395 (“The Complainant asserts that its trademark is well-known. However, the Complainant did not provide evidence to support such a claim pertaining to the reputation of its trademark”) and UDRP CAC Case No. 104559 (“Nowhere in the annexes was there any information that could confirm popularity and/or well-known character of the “SAMPO” trademarks and their use in relation to specific services, e.g. financial services and services relating to cryptocurrency investments (e.g. publications, media articles and press-releases, awards, etc.).

This Panel, using the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), it has decided to conduct limited research to identify whether the word “AQUILA” can be only associated with the Complainant. In this vein, the Panel has found out the following information at Wikipedia and the European Trademark Database:

1. In accordance with Wikipedia, the word AQUILA may refer to books (Aquila book by Andrew Norriss), fictional entities (a ship in the video game), given name or surnames, places (Aquila, Michoacán), automotive (Aquila racing cars, a Danish firm), aviation (angus aquila, a British aircraft), animals (a genus of birds including some eagles), constellations (the astronomical constellation, the Eagle) and companies such as Aquila Inc and the Complainant.
2. The European Trademark Database shows different valid trademark registrations composed of the word AQUILA such as the trademark Nr.**0947689** AQUILA CORDE ARMONICHE owned by the company Aquila Corde Armoniche S.R.L. at class 7, the trademark Nr. **1365817**AQUILA owned by Hangzhou Sino Eagle Yacht Co. Ltd at class 12, the trademark Nr. **1649870** AQUILA owned by the company Revolt Zycling AG at classes 9, 12, 25 & 28, the trademark Nr. **003496585** AQUILA owned by Schmid Handels GmbH at classes **3, 18, 25**, the trademark Nr. **005937834** AQUILA owned by Mountway Limited, etc at classes **07, 09, 10, 20**, among many others.

The limited research has confirmed that the Complainant is one of the many users of the word AQUILA and, therefore, it cannot be confirmed that the word AQUILA can be only associated with Complainant.

Regarding the general powers of the Panel, Past Panels have agreed that panels may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. This factual research might include visiting website, reviewing dictionaries or encyclopedias (e.g., Wikipedia), or accessing trademark registration databases.

See paragraph 4.8. of WIPO Overview.

From the evidence at hand, it is not clear whether the Complainant’s AQUILA trademarks are widely known and/or the term “AQUILA” can be only associated with Complainant. In addition, the Complainant has failed to provide with evidence showing the Respondent’s knowledge about the Complainant’s right.

Past Panels have indicated that complaints alleging the types of conduct described in UDRP paragraph 4(b) should be supported by arguments and available evidence such as dated screenshots of the website to which the disputed domain name resolves or correspondence between the parties. Even in cases of respondent default, panels have held that wholly unsupported conclusory allegations may not be sufficient to support a complainant’s case.

See paragraph 3.1. of WIPO Overview.

The Complainant has also indicated that the Respondent uses the trademark AQUILA together with the word “group”. In accordance with the Complainant, there is no other reason for the Respondent to combine the use of “Group” with “Aquila” other than the Respondent’s knowledge about the Complainant’s trademark “AQUILA”.

The limited research also showed that the term AQUILA has been used for different purposes, including in different business areas, and, therefore, the fact that Respondent chose to combine the term “AQUILA” together with the word “GROUP” it does not necessarily mean that the Respondent was aware of the Complainant’s trademark rights over the term “AQUILA”. Since the Complainant did not present with solid evidence to confirm the knowledge of Respondent about his trademark, therefore, this argument is disregarded by the Panel.

One additional argument presented by the Complainant is the fact that Respondent had knowledge of the illegal use of the Disputed Domain since the Respondent initially presented content on the website (information regarding an Arab company) but that content was deleted in response to the contact attempts. In fact, the website under the Disputed Domain Name has been inactive showing the advice “the account has been suspended” after the contact attempts. Furthermore, the Complainant mentions that the fact that the Respondent did not respond to any contact attempt by the Complainant it shows that the Respondent has no bona fide interest in using the trademark. Otherwise, he would have informed the complainant of the reasons why he would be entitled to use the Disputed Domain Name for his own purposes.

To support this argument, the Complainant added as evidence the current screenshot of the Disputed Domain Name as well as the

different communication exchanged with a Domain Name Broker at the website sedo.com, which is a company specialized in buying and selling domain names.

Here is important to consider the fact that the messages exchanged between Complainant's Domain Name Broker and the Complainant are mainly written in German language. However, from the messages it can be inferred that Complainant indeed tried to contact the Respondent but nowhere in the communications can be seen that Complainant was warning the Respondent about its trademark rights over the term "AQUILA" and it rather seems that the Complainant wanted to acquire the Disputed Domain Name via sedo.com from the Respondent. This element can be seen from the message dated 21.07.23 where apparently the Domain Name Broker indicated to Complainant that Respondent did not react to the offers and the Broker asked to increase the offer.

The Complainant also signaled his need to have the Disputed Domain Name to reflect its business worldwide and to fight dilution of its famous trademark by third party's use of the trademark. This argument as such is not contemplated by the Policy. In fact, the Policy sets out the following as a circumstance of bad faith:

(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 Respondent has engaged in a pattern of such conduct; or

However, for the current case there is no evidence showing that the Respondent engaged in such a pattern of conduct.

Lastly, the Complainant mentioned that the Disputed Domain Name was not registered to refer to the Respondent's business or own products, but only to attract Internet users to this website for commercial purposes by creating a likelihood of confusion with the Complainant's trademark.

While it is true that the evidence at hand does not allow to identify the purpose behind the registration of the Disputed Domain Name by the Respondent, it is also true that the Complainant failed to show the previous knowledge of the Respondent about its trademark AQUILA. Moreover, the limited research done by this Panel also showed that the term AQUILA cannot be only referred to Complainant but it is a word used for different purposes. Therefore, and in absence of specific evidence showing a connection between the registration made by the Respondent, this Panel is not in the position to confirm that the Respondent registered the Disputed Domain Name to attract Internet users for commercial purposes by creating a likelihood of confusion with the Complainant's trademark.

In WIPO Case Nr. D2018-0072 Rolyn Companies Inc vs. PRIVACYDOTLINK CUSTOMER 3473447 / Kwangpyo Kim, Mediablue Inc., the Panel confirmed this view as follows:

"The Complainant must prove that the Respondent registered the disputed domain name with the Complainant's trademark in mind".

In light of the evidence presented to the Panel, the Panel draws the inference that the Disputed Domain Name was not registered is not being used in bad faith. However, this decision is without prejudice to Complainant's right to bring a future action under the Policy, in the event the domain name is used in bad faith. See, e.g., Staedtler Mars GmbH & Co. KG v. Maryna Kobieliava, WIPO Case No. D2015-0050 ("Should the Respondent in the future use the disputed domain name in bad faith, the Complainant may file a complaint on the basis of new circumstances at such time.").

Reverse Domain Name Hijacking

Paragraph 15(e) of the UDRP Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

RDNH is furthermore defined under the UDRP Rules as "using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name."

Panels have consistently found that the mere lack of success of a complaint is not itself sufficient for a finding of RDNH. At the same time, the mere fact of a respondent default would not by itself preclude an RDNH finding as this ultimately turns on the complainant's conduct. In either event, following some early cases to the contrary, panels have more recently clarified that, for an RDNH finding to be made, it is not necessary for a respondent to seek an RDNH finding or prove the presence of conduct constituting RDNH.

See paragraph 4.16 of WIPO Overview

Based on the above, the Panel has the obligation to decide as to whether the Complainant's conduct can be considered as a RDNH. Based on the evidence presented by the Complainant, the Panel is of the opinion that this dispute can be categorized as "Plan B"; i.e. ploy commonly met with in disputes under the Policy by which Complainants file complaints only after bargaining over a purchase price had failed".

The difference between this and other cases where Complainant's behavior was considered as RDNH is the fact that Complainant had an arguable case; based on his trademark rights together with the fact that Respondent did not reply to the Complaint. Therefore, it is possible that that this complaint was filed on legitimate grounds rather than an intention to harass the Respondent and consequently, this Panel can infer that no RDNH can be found at this stage.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **aquila-group.com**: Remaining with the Respondent
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PANELLISTS

Name	Victor Garcia Padilla
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DATE OF PANEL DECISION **2023-10-02**

Publish the Decision
