

Decision for dispute CAC-UDRP-105788

Case number **CAC-UDRP-105788**

Time of filing **2023-09-15 09:51:15**

Domain names **jcdecaux.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **JCDECAUX SE**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Clement BARBIER**

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <jcdecaux.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark, amongst others:

- International trade mark registration no. 803987, registered on 27 November 2001, for the word mark JCDECAUX in classes 6, 9, 11, 19, 20, 35, 37, 38, 39, 41 and 42 of the Nice Classification

(Hereinafter, collectively or individually 'the Complainant's trade mark' or 'the trade mark JCDECAUX' interchangeably).

The disputed domain name was registered on 11 September 2023 and, at the time of writing this decision, it does not resolve to an active website ('the Respondent's website').

FACTUAL BACKGROUND**A. Complainant's Factual Allegations**

In 1964, Jean-Claude Decaux invented the new concept and business model of street furniture with bus shelters financed by advertising, thereby laying the foundations to set up the Complainant's business.

The Complainant is the world's leader in outdoor advertising focussed on three segments of industry: street furniture, transport advertising and billboard. It is present in more than 80 countries and 3,573 cities and, in 2021, the Complainant generated a revenue of €3.3bn.

In addition to the trade mark mentioned under the above section 'Identification of Rights', and other trade marks in its portfolio, the Complainant owns numerous domain names which contain the term 'jcdecaux', most notably: <jcdecaux.com>, which was registered in 1997.

B. Respondent's Factual Allegations

The Respondent has defaulted in this UDRP administrative proceeding and has therefore made no factual allegations.

PARTIES CONTENTIONS

A. Complainant

Complainant's contentions can be summarised as follows:

I. The disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's trade mark JCDECAUX. The addition of the letter 'e' to the trade mark JCDECAUX is insufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trade mark. The Complainant further submits that this is a clear case of 'typosquatting', a practice in which the domain name contains obvious misspellings of a complainant's trade mark.

Relying on previous CAC decisions and the WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0'), paragraph 1.9, the Complainant contends that UDRP panels have decided that slight spelling variations do not prevent a finding of confusing similarity under the UDRP Policy. The Complainant also takes stock of the WIPO Jurisprudential Overview 3.0, paragraph 1.11, to support its claim that the Top Level Domain (TLD) suffix (<.com>) is typically disregarded in the assessment under paragraph 4(a) of the Policy when comparing disputed domain names and trade marks.

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

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. There is no contractual arrangement between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark, or to apply for registration of the disputed domain name on the Complainant's behalf.

The Complainant also asserts that the Respondent is not known by the disputed domain name. On the contrary, the disputed domain name is a typosquatted version of the Complainant's trade mark JCDECAUX, and such practice evidences the Respondent's lack of rights or legitimate interests in connection with the disputed domain name.

Lastly, the Complainant states that the disputed domain name resolves to a parked page comprising per-per-click (PPC) commercial links, and that such use of the disputed domain name is neither bona fide nor legitimate non-commercial or fair use.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant submits that the trade mark JCDECAUX was already well-known for decades and protected worldwide at the time of registration of the disputed domain name, such that it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark.

Use

The Complainant claims that the disputed domain name is not used for any bona fide offerings in so far as the Respondent's website contains PPC links, and that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of that website (paragraph 4(b)(iv) of the UDRP Policy).

As additional indicia giving rise to a presumption of bad faith, the Complainant refers to the fact that the MX server has been set up for the disputed domain name, a factor which indicates that the latter may be actively used for fraudulent email purposes.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent has defaulted in this UDRP administrative proceeding and has therefore failed to advance any substantive case on the merits.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

- (i) The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (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.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'JCDECAUX' since 2001.

The disputed domain name is <jcdecaux.com>, and the Complainant's trade mark is JCDECAUX.

The Panel notes that the Complainant's trade mark JCDECAUX is wholly incorporated into the disputed domain name, the only difference being the additional keyboard letter 'e' in the term 'jcdecaux'. In the Panel's view, the additional letter 'e' has no material bearing on the confusing similarity assessment, such that the disputed domain name clearly evokes the Complainant's trade mark JCDECAUX.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP administrative proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Complainant denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain name; and that the Respondent is not

making a legitimate non-commercial or fair use of the disputed domain name.

The Panel has also taken stock of paragraph 2.9 of the WIPO Jurisprudential Overview 3.0, according to which UDRP panels have found that the use of a domain name to host a parked page containing PPC links does not represent a bona fide offering where such links compete with, or capitalise on, the reputation and goodwill of the complainant's trade mark or otherwise mislead Internet users.

The Respondent has failed to refute any of the Complainant's submissions. The Panel considers the available evidence to lend credence to the Complainant's case, such that the requirement under paragraph 4(a)(ii) of the UDRP Policy has been met.

D. Registered and Used in Bad Faith

Registration

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has been using the trade mark JCDECAUX since at least 2001;
- The Complainant operates its activities through the almost identical domain name <jcdecaux.com>, which was registered in 1997;
- The disputed domain name <jcdecaux.com> was registered in 2023;
- The Respondent's lack of participation in the course of this UDRP administrative proceeding; and
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name.

Use

The Complainant submits that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

'(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 respondent's website or location'.

Furthermore, as additional evidence of bad faith use, the Complainant alludes to the fact that the MX server has been set up for the disputed domain name.

As mentioned in the above section 'Identification of Rights', the disputed domain name does not currently resolve to an active website.

The Panel has consequently consulted paragraph 3.1.4 (circumstances (iv) above) and paragraph 3.3 (passive holding) of the WIPO Jurisprudential Overview 3.0 to form its view on the use of the disputed domain name under this UDRP Policy ground.

In the present matter, the Panel considers the most conducive factors to a finding in favour of the Complainant under this Policy ground to be (i) the degree of distinctiveness and reputation of the Complainant's trade mark in the niche field of outdoor advertising, which the Panel accepts; (ii) the Complainant's trade mark registration and use of almost identical domain name <jcdecaux.com> for over 25 years before the Respondent's registration of the disputed domain name; (iii) the Respondent's enabling of the email function of the disputed domain name, which suggests that the Respondent might have intended to use the disputed domain name as a vehicle for a fraudulent commercial venture; and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

The Respondent's conduct would therefore fall into the remit of paragraph 4(b)(iv) of the UDRP Policy.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. jcdecaux.com: Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION 2023-10-10

