

Decision for dispute CAC-UDRP-105860

Case number CAC-UDRP-105860

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Domain names myselogerpro-api.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization DIGITAL CLASSIFIEDS FRANCE

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Ian Hector

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

In this proceeding the Complainant relies on the following trademark registrations:

1. French trademark registration No. 1751230 "SELOGER" (word), filed on April 13, 1988 and duly renewed;
2. French trademark registration No. 3120500 "SE LOGER PRO" (word), filed on September 11, 2001;
3. French trademark registration No. 3436367 "SeLogger" (word + device), filed on June 22, 2006; and
4. French trademark registration No. 4319185 "Seloger" (word + device), filed on December 02, 2016.

The Complainant also refers to various domain names that incorporate the "SEOLOGER" trademark, including <seloger.com> registered since October 18, 1996.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant states it is a group that has been specializing for more than 25 years in the distribution of real estate advertisements on the internet and in the specialized press.

The Complainant claims that it employs over 20,000 real estate professionals and has over 60 million visits on the Internet.

The disputed domain name was registered on September 23, 2023 and resolves to an inactive website.

The Complainant alleges that the disputed domain name is confusingly similar to its trademarks since the trademark is included in its entirety in the disputed domain name and the addition of the terms "MY" and "API" is not sufficient to avoid the likelihood of confusion.

The Complainant also refers to previous UDRP decisions confirming Complainant's rights over the "SELOGER" and "SELOGER Pro" marks.

Thus, the Complainant contends the disputed domain name is confusingly similar to the Complainant's trademark.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name, is not related in any way with the Complainant and the Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark, or apply for registration of the disputed domain name. The disputed domain name resolves to an inactive page.

The Complainant contends that the Respondent did not use the disputed domain name, and this confirms that Respondent has no demonstrable plan to use the disputed domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant's submissions on the bad faith element of the UDRP can be summarized as follows:

1. The disputed domain name includes a well-known and distinctive trademark "SELOGER" and is confusingly similar to Complainant's mark.

2. The Complainant alleges that the term "MYSELOGERPRO" is known only in relation with the Complainant and refers to the Complainant official customer access for professionals and provides "Google" search results. Given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

3. The Complainant relies on the passive holding doctrine and the "Telstra" decision (**WIPO Case No. D2000-0003, "Telstra Corporation Limited v. Nuclear Marshmallows"**). Thus, the Complainant alleges that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

Therefore, the Complainant claims the disputed domain name was registered and being used in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are summarized in the Factual Background section above.

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

A. Identical or confusingly similar

The Complainant provides evidence of the French national registrations for the marks “SELOGER” and “SELOGER Pro”.

As confirmed by the “WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition” (“WIPO Overview 3.0”): “where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case” (see par. 1.2.1).

The disputed domain name fully incorporates the Complainant’s mark with the addition of the terms “My” and “Apl”.

As stated in 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” and “where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element” (see par. 1.7 and 1.8).

In the present case, the Complainant’s word trademarks “SELOGER” and “SELOGER Pro” (word elements “SELOGER” and “SELOGER Pro”) are clearly recognizable within the disputed domain name and the addition of the terms “my” and “apl” does not change overall perception of the disputed domain name and does not affect confusing similarity.

The gTLD “.com” is to be disregarded under the confusing similarity test as it does nothing to eliminate confusion. Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following: (i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see “Julian Barnes v. Old Barn Studios”, WIPO Case No. D2001-0121; “Belupo d.d. v. WACHEM d.o.o.”, WIPO Case No. D2004-0110.

The disputed domain name was registered on September 23, 2023.

It does not resolve to any active page. The Respondent did not respond. While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows the Panel to draw such inferences as it considers appropriate, see paragraph 14(b) of the Rules and CAC Case No. 101284: “A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable inferences may be drawn from the information provided by the complainant”.

The Complainant has made a prima facie case of Respondent’s lack of rights or legitimate interests. The Respondent is not known by the disputed domain name and is identified as an individual with no connection to the Complainant’s business, the disputed domain name or any name corresponding to the disputed domain name. The Complainant has not granted any license or authorization to use its trademark to the Respondent and the Complainant is not doing any business with the Respondent.

Passive holding of the disputed domain name in the circumstances of this case does not create any rights or legitimate interests of the Respondent.

Therefore, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

These circumstances are non-exhaustive and other factors can also be considered in deciding about the bad faith element. It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark (see par. 3.1 of the WIPO Overview 3.0).

Targeting is important in establishing bad faith under the UDRP. The Panel finds that the Complainant provided sufficient evidence that the disputed domain name was registered and is being used in bad faith based on the following:

1. The nature of the disputed domain name (incorporating the “SELOGER” and “SELOGER Pro” trademarks of the Complainant with the addition of the descriptive terms “my” and “api”) and the timing of the registration of the disputed domain name – September 23, 2023, many years after the Complainant obtained protection for its trademarks. The nature of the disputed domain name indicates that the Respondent was most likely aware of the Complainant and its trademark when he registered the disputed domain name.
2. The strength of the Complainant’s “SELOGER” and “SELOGER Pro” trademarks. The Panel notes that the Complainant provided only limited evidence of well-known character of its trademarks (Company profile with some history and numbers, reference to previous UDRP decisions and “Google” search results). Normally, more evidence is required to establish that a trademark is well-known/ has a strong reputation (e.g. evidence of awards, publications by independent sources, media reports, etc.). However, this is not fatal to the Complainant taking into account other evidence available as well as facts of this dispute. Previous UDRP decisions relating to the Complainant’s trademarks in Complainant’s favor, some of which are referred to in the complaint, could be an additional indication of popularity of the Complainant’s trademarks. While each UDRP case is unique and has its own set of facts, previous decisions in Complainant’s favor in similar circumstances can demonstrate that the Complainant’s mark was already targeted by cybersquatters and is popular (see e.g. **CAC Case No. 105679**: “The Complainant’s SELOGER trademark is a distinctive and renowned trademark and has been registered and used for about 25 years” and **CAC Case No. 105586**: “In this case the Complainant’s SE LOGER PRO mark and its group’s SE LOGER mark appear to enjoy an established reputation and goodwill built up over many years”).
3. Passive holding of the disputed domain name in the circumstances of this case indicates both registration and use in bad faith. The WIPO Overview 3.0 states that “from the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding” and the panelists “will look at the totality of the circumstances in each case” (par. 3.3). The Panel notes that passive holding per se does not indicate bad faith. However, the totality of the circumstances of this dispute proves bad faith of the Respondent, in particular: i) strength of the Complainant’s mark (even taking into account certain shortcomings in Complainant’s submissions) and timing of registration of the disputed domain name, ii) the nature of the disputed domain name, iii) failure of the Respondent to respond and take part in this proceeding and iv) the implausibility of any good faith use to which the domain name may be put – the Panel does not find any circumstances under which the Respondent could legitimately use the disputed domain name that is so closely associated with the Complainant, its trademarks and its business. This is confirmed by Panel’s own limited research conducted under par. 10 of the UDRP Rules (“Google” search). Any possible explanation of a potential legitimate use is solely within the Respondent’s knowledge and the Respondent failed to respond and provide any explanations.
4. Based on the above, the Panel finds that Respondent’s behavior falls within, at least, par. 4 b (iv) of UDRP and the Respondent by using the disputed domain name has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement and that the Respondent takes unfair advantage of the Complainant’s mark. The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **myselogerpro-api.com**: Transferred

PANELLISTS

Name	Igor Motsnyi
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DATE OF PANEL DECISION 2023-11-04

