

Decision for dispute CAC-UDRP-105896

Case number CAC-UDRP-105896

Time of filing 2023-10-20 09:33:56

Domain names poinp.com

Case administrator

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

Complainant

Organization POINT P

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name KB Roge

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 these proceedings, the Complainant relies on the following trademarks:

- "POINT.P", EU Registration No. 6330609, filed on October 3, 2007, and duly renewed, in the name of POINT P (the Complainant);
- "POINT.P", French Registration No. 97694663, filed on September 9, 1997, and duly renewed, in the name of POINT P (the Complainant);
- "POINT.P", French Registration No. 4015854, filed on June 27, 2013, and duly renewed, in the name of POINT P (the Complainant);
- "POINT.P", French Registration No. 4783087, filed on July 6, 2021, in the name of POINT P (the Complainant).

It is worth noting that, the Complainant owns similar trademarks in other countries, including a couple of International Registrations, which have not been cited in these proceedings.

FACTUAL BACKGROUND

The Complainant is a French company founded in 1979 that belongs to the well-known SAINT-GOBAIN group, specializing in the distribution of construction materials and the manufacture of prefabricated and ready-mixed concrete. Its main clients are professionals of the building industry, in more than 1000 points of sale in France.

The Complainant owns a small-sized portfolio of trademarks including the wording "POINT.P", among which a French registration dating back to 1997. It also owns related domain names, such as <pointp.com> since February 19, 1997.

The disputed domain name <POINP.COM> was registered on June 15, 2022 by the Respondent (as confirmed by the Registrar).

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its POINT.P trademark, as it is a misspelling of this wholly incorporated trademark. This last element is sufficient to support the finding that the disputed domain name is confusingly similar to the Complainant's trademark. Indeed, the mere removal of the single letter "T" from the Complainant's trademark does not change the overall impression of a most likely connection with the trademark POINT.P of the Complainant. As to the gTLD ".com", the Complainant suggests that it should be disregarded, as per the usual practice.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name because the Respondent is not known by the disputed domain name, the Complainant is not affiliated with nor has it ever authorised the Respondent to register its trademark as a domain name and the Complainant has no business with the Respondent.

According to the Complainant, given the distinctiveness and reputation of the POINT.P trademark, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark in an intentionally designed way with the aim to create a likelihood of confusion with the Complainant's trademarks and domain names, and this is evidence of the fact that the disputed domain name was registered in bad faith.

With respect to use in bad faith, the Complainant points out that the Respondent has used the disputed domain name as a parking website with commercial links for its own commercial gain, a fact that -in combination with the incorporation of a reputable trademark in a domain name- proves use in bad faith.

For all these reasons, the Complainant concludes that the Respondent registered and used the disputed domain name in bad faith.

RESPONDENT:

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).

The disputed domain name consists of the Complainant's whole trademark (POINT.P), written in a misspelled way. The mere removal of the dot between the word "POINT" and the letter "P", as well as the removal of the letter "T" from the Complainant's trademark, are not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark of the Complainant.

As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the POINT.P trademark in a

domain name, and that it had never licensed its trademark to the Respondent.

Furthermore, the Respondent has not demonstrated any use of the disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore, the Panel is satisfied that also the second requirement under the Policy is met.

BAD FAITH

The Complainant has not, to the satisfaction of the Panel, shown the disputed domain name has been registered or is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

As far as registration in bad faith is concerned, given the reputation in France of the Complainant's trademark in the field of construction materials and the fact that the disputed domain name fully incorporates this trademark, even in a misspelled way, it would normally be rather clear that, at the time of the registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark. Indeed, as most panels have systematically accepted, the registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third-party amounts to registration in bad faith.

However, in the present matter, the Complainant has not provided sufficient evidence to prove that, the Respondent was in any way aware of the Complainant's trademark when it had registered the disputed domain name. As already highlighted, the Complainant is well-known in France, but the Respondent is located in the United States of America, according to the Whois information confirmed by the Registrar. The Complainant does not seem to have trademark rights in the USA; even the International Registrations that the Panel has spotted through its own initiative / online research do not designate the USA. Further, the Complainant does not seem to have sales or other use in the USA; even the online sales that are available on the Complainant's website – again discovered through the Panel's individual online research – do not concern the USA, the latter not appearing to interest the Complainant, at all.

Hence, with the above in mind, the Panel finds that the Complainant has failed to prove that, at the time of registration of the disputed domain name, the Respondent had acted in bad faith.

With respect to use in bad faith, the disputed domain name resolves to a parking website, with commercial links. For this Panel, such behaviour could amount to use in bad faith, based on the Complainant's overall assertions. Nevertheless, and even though it seems rather impossible for this Panel to conceive any plausible active use of the disputed domain name by the Complainant that would be legitimate, the commercial links seem to concern another field of the economy than construction, i.e. GPS tracking systems, car fleets, etc., not any of the Complainant's competitors. In any case, in the absence of bad faith proof at the time of registration, such discussion is both unnecessary and superfluous.

For all circumstances mentioned above, the Panel is not satisfied that the third requirement under the Policy is met.

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.

The Respondent contacted the CAC after the lapse of the time limit for filing a response (November 14, 2023) via email. The Respondent stated: "Good day. Regarding case #CAC-UDRP-105896, how do I submit a response to the panel on the platform? I was not familiar with the arbitration board (unfortunately thought it was spam) and your process, but I have a sincere interest in protecting and preserving the rights associated with my ownership of the domain in dispute. Thank you in advance for any assistance."

The Respondent reviewed the case file on November 14, 2023.

The case administrator provided the Respondent with information on how to file a submission after the lapse of the time limit (November 15, 2023).

No further communication via email or via online case file was received by the CAC until the publication of this decision.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name wholly incorporates the Complainant's trademark, written in a misspelled way. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademark to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent had not registered the disputed domain name in bad faith, as the Complainant has failed to prove this.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **poinp.com**: Remaining with the Respondent

PANELLISTS

Name	Sozos-Christos Theodoulou
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DATE OF PANEL DECISION **2023-11-20**

Publish the Decision
