

Decision for dispute CAC-UDRP-105930

Case number CAC-UDRP-105930

Time of filing 2023-11-15 14:15:15

Domain names abngroup.org

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization ABN Group Pty Ltd

Complainant representative

Organization CSC Digital Brand Services Group AB (c/o Paddy Tam)

Respondent

Name Daniel Jason

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 trademark registrations, as per trademark registration details submitted as an annex to the Complaint:

- Australian trademark registration No. 1572359 for ABN (figurative mark), registered on August 1, 2013, in international classes 36, 37 and 41;

- Australian trademark registration No. 2207608 for ABN TRADE MATES (word mark), registered on September 2, 2021, in international class 37.

FACTUAL BACKGROUND

The Complainant is a construction, property and finance company based in Australia. Established in Perth in 1978, it operates over 20 businesses including new home design and construction, commercial construction, land development & built-form developments, mortgage broking, conveyancing, plumbing, concreting, roofing, ceiling and wall fixing, and cabinet making.

The Complainant has built over 88.000 homes across Western Australia and Victoria, and financed more than 38.000, employing more than 1.900 people and engaging over 3.000 independent construction contractors.

The Complainant also trains and employs more apprentices than any other builder in Australia.

The Complainant is the owner, amongst others, of the domain name <abngroup.com.au>, registered on December 29, 1995, and used by the Complainant to promote its services under the trademark ABN.

The disputed domain name <abngroup.org> was registered on August 08, 2023, and is not pointed to an active website. According to the evidence submitted by the Complainant – which has not been challenged by the Respondent -, the disputed domain name has been used in connection with the sending of job scam emails. Specifically, according to the documents submitted as one of the annex to the Complaint, an email was sent from an email address based on the disputed domain name by a person who identified himself as Chief Information Officer of the Complainant, transmitted a job offer letter reproducing the Complainant’s trademark and company details and requested the recipient to provide personal documents and information.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant contends that the disputed domain name <abngroup.org> is confusingly similar to the trademark ABN in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the descriptive term “group” and the generic Top-Level Domain (gTLD) “.org”.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name since: i) the Respondent is not a licensee of the Complainant and has in no way been authorized or allowed by the Complainant to use the ABN mark; ii) the Respondent is not commonly known by the disputed domain name, nor has he any rights in the ABN mark; iii) the Respondent does not use, and has not used, the disputed domain name in connection with a bona fide offering of goods or services since the disputed domain name has been used in connection with the sending of job scam emails from an email address based on the disputed domain name; iv) the Respondent has not made a legitimate, non-commercial fair use of the disputed domain name since his use of the Complainant’s ABN mark is no doubt a direct effort to take advantage of the fame and goodwill of the Complainant’s brand, causing a high risk of implied affiliation with the Complainant; v) the Respondent registered the disputed domain name long after the Complainant applied for registration of its trademark ABN, which it first used in commerce in 2013.

The Complainant claims that the Respondent registered and used the disputed domain name in bad faith because: i) the Complainant was extensively using its trademark ABN long before the date of registration of the disputed domain name; ii) the Respondent used the disputed domain name to send fraudulent job scam emails, proving he was well aware of the Complainant’s mark and services when registering the disputed domain name; iii) the Respondent’s use of the disputed domain name shows the Respondent intentionally attempted to attract, for commercial gain, internet users by creating a likelihood of confusion with the Complainant’s mark; iv) the Respondent employed a Whois privacy service to hide his identity in the public Whois records, which past panels have considered as further evidence of 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).

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

1. The Complainant has provided evidence of ownership of trademark registrations consisting of ABN with device elements or generic terms.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks as it reproduces the core of the Complainant's trademarks, consisting of the three-letter term ABN, with the mere addition of the descriptive term "group", which is insufficient to prevent a finding of confusing similarity. Moreover, the gTLD ".org" is viewed as a standard registration requirement and as such can be disregarded for the purpose of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy.

2. With reference to the Respondent's rights or legitimate interests in the disputed domain name, the Panel finds that the Complainant has made a prima facie case and that the Respondent, by not submitting a Response, has failed to provide any element from which a Respondent's right or legitimate interest in the disputed domain name could be inferred.

The Panel notes that, based on the records, there is no relationship between the parties and the Complainant has not authorized the Respondent to register or use its trademarks or the disputed domain name. Moreover, there is no evidence that the Respondent might be commonly known by the disputed domain name or a name corresponding to the disputed domain name.

As highlighted above, the disputed domain name, confusingly similar to the Complainant's trademarks, has not been pointed to an active website but, according to the evidence provided by the Complainant, has been used for the creation of an email address from which the Respondent sent an email to a job seeker passing off as an officer of the Complainant, requesting the recipient to provide personal documents and information. The Panel finds that the Respondent's use does not amount to a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name without intention to misleadingly divert the consumers or to tarnish the Complainant's trademarks. Moreover, the disputed domain name, combining the Complainant's trademark ABN with the term "group", is inherently misleading and suggests an affiliation with the Complainant that, according to the records, does not exist.

3. As to bad faith at the time of the registration, the Panel finds that, in light of the Complainant's prior registration and use of the trademark ABN in connection with the services provided by the Complainant, promoted online via the Complainant's website at <abngroup.com.au>, the Respondent was or could have been aware of the Complainant's trademark when it registered the disputed domain name in August 2023. The fact that, according to the evidence submitted by the Complainant – which has not been contested by the Respondent –, the Respondent mentioned the Complainant's company name in a communication sent via an email address based on the disputed domain name, reproducing also the Complainant's trademarks and the Complainant's company information in documents sent as attachment to the email, demonstrates that the Respondent was indeed well aware of, and intended to target, the Complainant and its trademarks.

As indicated above, the disputed domain name is currently not pointed to an active website. As established in a number of prior cases, the concept of "bad faith use" in paragraph 4(b) of the Policy includes not only positive action but also passive holding.

Furthermore, the Panel finds that, as established in a number of prior UDRP decisions, the use of a domain name for purposes other than to host a website may constitute bad faith. The use of the disputed domain name to send deceptive emails aimed at obtaining personal documents and information from prospective job applicants certainly amounts to bad faith use.

Therefore, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **abngroup.org**: Transferred

PANELLISTS

Name	Luca Barbero
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DATE OF PANEL DECISION **2023-12-28**

Publish the Decision
