Decision for dispute CAC-UDRP-106068

Case number	CAC-UDRP-106068
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Domain names	support-klarna.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Klarna Bank AB

Complainant representative

Organization	SILKA AB

Respondent

Name	Tom Mueller

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 trademark KLARNA by means of several international and national trademark registrations, inter alia, Swedish trademark registration (Reg. No. 405801 registered on September 11, 2009), USPTO trademark registration (Reg. No. 4582346 registered on August 12, 2014); international trademark registrations (Reg. No. 1066079 registered on December 21, 2010; Reg. No. 1217315 registered on March 4, 2014); and EUIPO trademark registrations (Reg. No. 009199803 registered on December 6, 2010; Reg. No. 012656658 registered on July 30, 2014). The Complainant also maintains a strong online presence and operates its main webpage at <klarna.com>," which was registered on December 12, 2008.

FACTUAL BACKGROUND

The Complainant "Klarna Bank AB" founded in 2005 in Stockholm, Sweden, is a leading global payments and shopping service, providing solutions to 150 million active customers across more than 500,000 merchants in 45 countries. The Complainant has more than 5,000 employees and facilitates more than two million transactions per day. The Complainant has a substantial social media presence with, for example, almost 600,000 followers on Instagram (https://www.instagram.com/klarna/) and 60,000 followers on X (https://twitter.com/klarna/). The Complainant also has a mobile application for the Android and Apple App Store platforms. The Complainant's Android app has been downloaded more than 10 million times. The Complainant is frequently featured in third-party articles as being considered among the top payment providers/gateways in its field.

The disputed domain name was registered on October 2, 2023.

PARTIES CONTENTIONS

COMPLAINANT:

(i) The Complainant has rights in KLARNA mark as identified in “Identification of rights” above. The disputed domain name is confusingly similar to the Complainant's KLARNA mark.

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not registered any trademarks, nor does the Respondent have unregistered trademark rights, for ‘support-klarna’ nor any similar term. The Respondent is not known, nor has ever been known, by its distinctive KLARNA mark, ‘support-klarna’, nor anything similar. The Respondent has not been licensed by the Complainant to register a domain name featuring the KLARNA mark, nor any confusingly similar variant thereof. The Respondent has not used, nor prepared to use, the disputed domain name in connection with a bona fide offering of goods or services. The disputed domain name resolves to a default and unfunctional parking page. Such use is neither a bona fide use of the disputed domain name pursuant to paragraph 4(c)(i) of the Policy nor a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii) of the Policy. The disputed domain name’s composition, by juxtaposing its distinctive KLARNA mark with the term ‘support,’ carries a high risk of implied affiliation.

(iii) The Respondent has registered and is using the disputed domain name in bad faith: i) the Respondent has registered and used the disputed domain name with actual knowledge of the Complainant's rights in the KLARNA mark; ii) given the renown of the KLARNA mark and composition of the disputed domain name that no good faith use could be made of it by the Respondent; iii) the worldwide reputation and distinctiveness of the KLARNA brand has been noted by many domain dispute panels in earlier proceedings; and iv) the Respondent has configured the disputed domain name with multiple MX (mail exchange) records, and this conduct is indicative of the Respondent’s intention to capitalize on the Complainant by engaging in email phishing or other fraudulent activities.

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

Language of the Proceedings

The Panel notes that the Registration Agreement is written in German, thereby making the language of the proceedings in German. The Complainant has requested that the proceeding should be conducted in English. The Panel has the discretion under UDRP Rule 11(a) to determine the appropriate language of the proceedings taking the particular circumstances of the administrative proceeding into consideration. See Section 4.5, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition; see also Lovehoney Group Limited v yan zhang, CAC 103917 (CAC August 17, 2021) (finding it appropriate to conduct the proceeding in English under Rule 11, despite Japanese being designated as the required language in the registration agreement). The Complainant contends that: (i) the disputed domain name encompasses the descriptive English word ‘support’; (ii) content on the disputed domain name’s landing page is in multiple languages, including English; (iii) the disputed domain name’s generic extension is ‘.com’, so it seems to have been prepared for users worldwide, particularly English speaking countries; (iv) English is the primary language

for international relations; (v) the Complainant's representatives are not established in Germany and are unable to communicate in German; and (vi) translating the Complaint into another language would cause considerable expense to the Complainant and undue delay to the proceeding.

Pursuant to UDRP Rule 11(a), the Panel finds that persuasive argument has been adduced by the Complainant. After considering the circumstance of the present case, in the absence of the Response and no objection to the Complainant's request for the language of proceeding, the Panel decides that the proceeding should be in English.

The Panel is satisfied that all other 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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

(2) Respondent has no rights or legitimate interests in respect of the domain name; and

(3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet[1]marketing, inc., FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City, Inc. v. Robertson, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant contends that it is the owner of the registered trademark 'KLARNA' as identified in "Identification of rights" above. The Panel notes that an international trademark registration or a national trademark registration is sufficient to establish rights in that mark. As such, the Panel finds that the Complainant has established its rights in the mark 'KLARNA.' The Complainant further contends that the disputed domain name is confusingly similar to its mark 'KLARNA' on the grounds that i) the disputed domain name incorporates entirely the Complainant's mark KLARNA with generic term 'support' and a hyphen; and ii) the addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name. The Panel agrees with the Complainant and notes that the addition of '.com' gTLD and a descriptive term is generally disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing a disputed domain name and a trademark. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark KLARNA.

No rights or legitimate interests

Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not been licensed by the Complainant to register a domain name featuring the KLARNA mark, nor any confusingly similar variant thereof. There are no indications that the Respondent has been commonly known by the domain name. The Panel finds that nothing in the records suggests that the Respondent is commonly known by the disputed domain name or authorized to use the Complainant's mark. Failure to make an active use of a website does not represent a bona fide offering of goods and services or a legitimate or fair use per Policy paragraph 4(c)(i) and (iii). See CrossFirst Bankshares, Inc. v Yu-Hsien Huang, FA 1785415 (Forum June 6, 2018) ("Complainant demonstrates that Respondent fails to actively use the disputed domain name as it resolves to an inactive website. Therefore, the Panel finds that Respondent fails to actively use the disputed domain name for a bona fide offering of goods or services or legitimate noncommercial or fair use under Policy paragraph 4(c)(i) or (iii)."). The Complainant provides screenshot evidence of the resolving website. The Panel therefore finds the Respondent fails to use the disputed domain name in connection with a bona fide offering of goods and services or a legitimate or fair use per Policy paragraph 4(c)(i) and (iii).

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the 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 the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the 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 its website or other online 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.

The Complainant contends that (i) given the renown of the KLARNA mark and composition of the disputed domain name that no good faith use could be made of it by the Respondent; (ii) the worldwide reputation and distinctiveness of the KLARNA brand has been noted by many domain dispute panels in earlier proceedings; and (iii) the Respondent has configured the disputed domain name with multiple MX (mail exchange) records, and this conduct is indicative of the Respondent's intention to capitalize on the Complainant by engaging in email phishing or other fraudulent activities.

The Panel agrees that the passive holding of a domain name does not necessarily circumvent a finding that the domain name is being used in bad faith within the requirements of paragraph 4(a)(iii) of the Policy. See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 (finding that in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the panel must give close attention to all the circumstances of the respondent's behavior, and a remedy can be obtained under the Policy only if those circumstances show that the respondent's passive holding amounts to acting in bad faith.)

The particular circumstances of this case that the Panel has considered are:

(i) The Complainant is a leading global payments and shopping service, providing solutions to 150 million active customers across more than 500,000 merchants in 45 countries. The Complainant has more than 5,000 employees and facilitates more than two million transactions per day. The Complainant has a substantial social media presence with, for example, almost 600,000 followers on Instagram (https://www.instagram.com/klarna/) and 60,000 followers on X (https://twitter.com/klarna/). As such, the Complainant's mark 'KLARNA' is considered as being a well-known and reputable trademark;

(ii) The Respondent has configured the disputed domain name with multiple MX (mail exchange) records; and

(iii) The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name.

Taking into account all of the above, the Panel concludes that the Respondent's passive holding of the disputed domain name constitutes bad faith under Policy, paragraph 4(a)(iii) and that the Respondent is using the disputed domain name in bad faith.

The Complainant further contends that the Respondent has registered and used the disputed domain name with actual knowledge of the Complainant's rights in the KLARNA mark. While constructive knowledge is insufficient for a finding of bad faith, per Policy paragraph 4(a)(iii), registration of a disputed domain name with actual knowledge of another's trademark rights is sufficient to establish bad faith, and can be shown by the notoriety of the mark and the use the Respondent makes of the disputed domain name. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (Forum February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding Policy paragraph 4(a)(iii) bad faith, the Panel here finds actual knowledge through the name used for the domain and the use made of it."); see also AutoZone Parts, Inc. v. Ken Belden, FA 1815011 (Forum December 24, 2018) ("Complainant contends that Respondent's knowledge can be presumed in light of the substantial fame and notoriety of the AUTOZONE mark, as well as the fact that Complainant is the largest retailer in the field. The Panel here finds that Respondent did have actual knowledge of Complainant's mark, demonstrating bad faith registration and use under Policy paragraph 4(a)(iii)."). The Panel agrees and infers, due to the manner of use of the disputed domain name as well as the notoriety of the Complainant's mark around the world that the Respondent had actual knowledge of the Complainant's rights in its mark KLARNA at the time of registering the disputed domain name, and thus the Panel finds the bad faith registration of the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **support-klarna.com**: Transferred

PANELLISTS

Name	**Mr. Ho-Hyun Nahm Esq.**

DATE OF PANEL DECISION 2024-01-07

Publish the Decision