Decision for dispute CAC-UDRP-106025

Case number	CAC-UDRP-106025
Time of filing	2023-12-01 09:15:41
Domain names	pointp.net

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	POINT P SAS

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Simon Rekta

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

Complainant is Point P SAS and is the owner of several trademarks POINT P. Complainant mentions:

- The International trademark POINT.P n°697482 registered on March 10th, 1998;
- The European trademark POINT.P n° 6330609 registered on October 3rd, 2007;
- The French trademark POINT P n°4015854 registered on June 27th, 2013;
- The International trademark POINT P n°1654998 registered on December 8th, 2021.

Further, Complainant, via its parent company, alleges that it also owns an important domain names portfolio comprising its trademark POINT P, such as the domain name <pointp.com> registered since February 19th, 1997 and used for its official website.

The disputed domain name is <pointp.net> registered by Respondent Simon Rekta on 13 November 2023.

FACTUAL BACKGROUND

Complainant belongs to the SAINT-GOBAIN group and is a company specializing in the distribution of construction materials and the manufacture of prefabricated and ready-mixed concrete, to a clientele composed mainly of professionals of the building sector. From the screenshot of the website of Complainant, <pointp.com>, as submitted by Complainant, it appears that the company is

active in France having agencies always less than 30 minutes from client's constructions sites. Moreover, the company is active for over 40 years.

The website is bilingual, both in the French and the English language.

Complainant states that the disputed domain name <pointp.net> is identical to its trademark POINT P. The trademark is included in its entirety, without any addition or deletion.

Complainant contends that the addition of the gTLD ".net" does not change the overall impression of the designation as being connected to the Complainant's trademark POINT P. It does not prevent the likelihood of confusion between the disputed domain name and Complainant, its trademark and its domain names associated. Complainant refers to various UDRP decisions.

Consequently, the disputed domain name <pointp.net> is identical to the Complainant's trademark POINT P.

Complainant asserts that Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, Respondent is not known as the disputed domain name.

Complainant also contends that Respondent is not related in any way with Complainant. Complainant does not carry out any activity for, nor has any business with the Respondent.

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

Next, Complainant states that the disputed domain name resolves to an inactive webpage and it has been used in a phishing scheme. Evidence of the inactive webpage and a phishing email are submitted. They are both in the French language.

Further Complainant asserts that Respondent uses the disputed domain name to pass itself off as one of Complainant's employees in order to receive undue payment.

Complainant asserts that this is behaviour without rights or legitimate interest to the disputed domain name and refers to several UDRP cases in which the same was decided.

With respect to the last requirement for transfer of the disputed domain name, that is to demonstrate that the domain name was registered and used in bad faith, Complainant states that its trademark has a reputation and that it is reasonable to infer that Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. Moreover, phishing has been considered in other UDRP cases as conduct of bad faith. Complainant submits citations of those UDRP cases.

Complainant requests thus the transfer of the disputed domain name.

PARTIES CONTENTIONS

Complainant´s contentions are summarised above.

No administratively compliant Response has been filed.

RIGHTS

Complainant has submitted evidence of the mentioned trademark registration in the Official Trademark Registers from which the Panel could verify the rights. All trademarks are of an earlier date than the registration of the disputed domain name.

These rights are all vested in the wordmark POINT P and applicable in various countries. The wordmark is identical to the disputed domain name as it is a common understanding that the addition of the gTLD will not be taken into account when assessing the identity or similarity of trademark and disputed domain name.

Thus, Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical to the trademarks in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Article 4 (c) of the Policy mentions circumstances, in particular but without limitation, that shall demonstrate rights or legitimate interests to the domain name.

In article 4 (c) (ii) the circumstance is mentioned that the domain name holder has been commonly known by the domain name.

Complainant has demonstrated that Respondent is not identified in the WHOIS database as the disputed domain name. In fact, Respondent is not a company but a person. Respondent is thus not commonly known under the disputed domain name.

This is evidence of no rights or legitimate interest in the disputed domain name by Respondent according to Article 4 (c)(ii) of the Policy.

In article 4 (c) (iii) the circumstance is mentioned that the domain name is used to make a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Complainant has asserted and -this is not disputed by Respondent- that Respondent is not related in any way with Complainant. Complainant does not carry out any activity for, nor has any business with Respondent.

Further, neither license nor authorization has been granted to Respondent to make any use of the Complainant's trademark, or apply for registration of the disputed domain name by Complainant.

Complainant states also that Respondent is busy with phishing activities by using the email address containing the disputed domain name to approach companies in order to receive undue payments.

Whether or not the submitted evidence shows any attempts of collecting payments it can be said that the use of a domain name that is identical to the trademark of Complainant in an email, which is signed by showing Complainant´s trademark cannot be interpreted in another way than that it must be an illegal activity or at least use of an email address and domain name with no legitimate interest.

This is evidence of no rights or legitimate interest in the domain name by Respondent according to Article 4 (c)(iii) of the Policy.

It follows from the above that 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

Paragraph 4(a)(iii) of the Policy requires that Complainant demonstrates that the disputed domain name has been registered and being used in bad faith.

Complainant asserts that POINT P is known for more than 40 years which is evidenced by the screenshot of its website. Also, it states that it is reasonable to infer that Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

The Panel agrees with Complainant that it is likely that the registration of the disputed domain name was done because Respondent was aware of the reputation of Complainant. This is to be considered as registration of the disputed domain name in bad baith.

Further the phishing activity of Respondent, namely the use of an email address comprising Complainant's trademark Point P, in order to attempt to confuse Complainant's clients about the origin of the requests made is a clear indication of use of the disputed domain name in bad faith. Whatever attempt is made in the email does not even be considered: acting as if Respondent is the Complainant is an illegal activity which results in use of the disputed domain name in bad faith.

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

Before being able to decide in this case the Panel however has to decide on a procedural factor.

Complainant, has demonstrated the phishing activity of Respondent by showing the webpage of <pointp.net> and an example of an -as alleged- phishing email.

The webpage of the disputed domain name states:

'Ce site est inaccessible'

The website text is in French.

The email correspondence shows an email question deriving from an email address <beatrice.bernardez@pointp.net> and signed by the same person followed by the device mark of Complainant being POINT.P followed by an address.

The responding email is from an 'assistante adminstrative' of a company.

The correspondence is in French.

Both evidence of the website and the email correspondence are in French which is not the language of proceedings. The language of the proceedings is English. The Panel has therefor to assess whether the evidence can be taken into account.

The Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") determine in article 10 that (only relevant paragraphs cited):

General Powers of the Panel

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(c) ..

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

(e) ..

And in article 11 of the Rules (only relevant paragraphs cited):

(a)..

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

The Panel concludes that it is not a formal requirement to request translation of the submitted evidence and thus the Panel is free to assess the evidence that is submitted. Nevertheless, the Panel must be rest assured that the Parties are treated with equality. In this respect the Panel notes that Respondent did not take the opportunity to defend the disputed domain name and therefore considers that Respondent is not treated with inequality if the Panel decides to accept the submitted evidence as it is.

The Panel can thus take the French text in the email into account but decided to look at the evidence without reading the French text in order to determine whether the case can be decided regardless the French text.

The Panel concludes the following:

With respect to the webpage:

The evidence shows an empty page where the word ‘inaccessible’ is most dominant. This French word is identical to the English word and thus the meaning is commonly clear. Therefore, the Panel accepts this evidence although it is not in the language of the proceedings.

With respect to the email:

From the lay-out of the email it is clear that this is an email that is made in bad faith because the email address <pointp.net> comprises the trademark of Complainant but the email is not originating from Complainant. In the signature of the email Complainant’s device mark POINT P has been used. This creates the impression that the email is originating from Complainant which it is not. The Panel find that based on the confusion that is created by the Respondent it can be already concluded that this email is a form of phishing.

The Panel concludes that even in the case that the Panel would not be able to assess the French email correspondence, it is clear that the email deriving from beatrice.bernardez@pointp.net is an act of phishing and phishing is an illegal activity.

Therefore, the decision can be based on the assessment as made in the above paragraphs despite the fact that some evidence is submitted in another language than the language of proceedings.

Now, 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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **pointp.net**: Transferred

PANELLISTS

Name	Marieke Westgeest

DATE OF PANEL DECISION 2024-01-10

Publish the Decision