Decision for dispute CAC-UDRP-106073

Case number	CAC-UDRP-106073
Time of filing	2023-12-14 09:01:03
Domain names	pricrunner.com

Case administrator

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

Complainant

Organization	PriceRunner International AB

Complainant representative

Organization	SILKA AB

Respondent

Name	Domain Admin

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 holds trademarks for PRICERUNNER and PRICERUNNER.COM, which cover numerous jurisdictions, including:

- PRICERUNNER International 866969 26/01/2005 Cl. 35;

- PRICERUNNER Sweden 371312 24/03/2005 Cl. 35;

- PRICERUNNER.COM European Union 004258794 21/03/2006 9, Classes 35, 42;

- PRICERUNNER European Union 003908531 06/04/2006 Classes 9, 35, 38, 41, 42;

- PRICERUNNER United Kingdom UK00903908531 06/04/2006 Classes 9, 35, 38, 41, 42;

- PRICERUNNER United States 4975600 14/06/2016 Classes 35, 38, 41.

FACTUAL BACKGROUND

The Complainant, founded in Sweden in 1999, is a price comparison service which enables users to compare prices and offers on

over five million products involving more than 6,000 retailers. The Complainant receives an average of more than 15 million visits to its online offerings each month, and also has approximately 21 million monthly service recipients in the EU. The Complainant has operations in Sweden, the UK, Denmark and Norway, and more than 150,000 verified user reviews of products and retailers. The Complainant offers its online services from, among other websites, www.pricerunner.com and www.pricerunner.se.

The Complainant was acquired by Klarna Bank AB, in 2022. Klarna Bank is a leading global payments and shopping service with more than 150 million active customers across over 500,000 merchants in 45 countries. The Complainant's acquisition by Klarna Bank AB was widely reported in numerous third-party sources in the jurisdictions in which it operates, including the United States.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant states that it has been operating for more than 20 years and its earliest trademarks for PRICERUNNER precede the registration of <pricrunner.com> (hereinafter the "Disputed Domain Name") by more than 15 years. The Complainant's trademarks cover numerous jurisdictions and its services are accessed by millions of monthly users. The Complainant's PRICERUNNER trademarks are readily identifiable in publicly accessible trademark databases.

The Complainant further states that the top search results for the PRICERUNNER mark clearly pertain to the Complainant's offerings. It is therefore evident that, notwithstanding other considerations, the simplest degree of due diligence would have otherwise made the Respondent aware of the Complainant's internationally-established rights in the PRICERUNNER mark.

The Complainant further states that the Respondent's selection of the string 'pricrunner.com' unequivocally reflects its attempt to capitalise on the Complainant's mark through typosquatting conduct (which panels have affirmed is 'inherently parasitic and of itself evidence of bad faith').

Complainant shows further that The Complainant has a notable social media presence with, for example, more than 75,000 followers on Facebook (https://www.facebook.com/PriceRunner/). The Complainant also has a mobile application for the Google Play and Apple App Store platforms. The Complainant's Google Play app has been downloaded more than 100,000 times.

The Complainant has won a number of awards over the years; these include, among others, Svenska SEO-priset - Årets Raket ('Swedish SEO Award - Rocket of the Year') (2021) and Bästa sök- och jämförelsetjänsten (IDG) ('Best Search and Comparison Service (IDG)') (2019).

In sum, the Complainant is very well known; so well known that in registering and using the Disputed Domain Name the Respondent could not argue that it lacked knowledge of the Complainant and its mark.

Independently, the Panel notes that upon attempting to access the resolving website a warning appears that reads: "Malicious Website Blocked."

RESPONDENT:

The Respondent has not appeared formally or informally to controvert the evidence submitted by the Complainant. Because the identity of the beneficial registrant is blocked by a proxy service, for the purposes of this proceeding, Domain Admin is the "Respondent" and "should be understood as also including the person or persons who caused the registration to be effected in the name of [Domain Admin]," WIPO Claim No, D2018-1722, The Hartman Media Company, LLC v. Host Master, 1337 Services.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
(ii) the respondent has no rights or legitimate interests in respect of the domain name; and
(iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Czech Arbitration Court has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case and defend its registration of the Disputed Domain Name.

By the Rules, paragraph 5(c)(i), respondent is expected to: "Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ..." Notwithstanding Respondent's default Complainant is not relieved from the burden of establishing its claim. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, 3.0, Sec. 4.3: "Noting the burden of proof on the complainant, a respondent's default (i.e., failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true." However, if a complainant's adduced evidence supports any element of the Policy, a respondent has an opportunity to contest the contention that its registration of the challenged domain name was unlawful.

A. The Disputed Domain Name is confusingly similar to a trademark or service mark in which the Complainant has rights.

This first limb of the Policy requires Complainant to prove that it has a trademark right and that the Disputed Domain Name is identical or confusingly similar to that mark. The Panel finds that Complainant has demonstrated that it has a registered trademark right to the term PRICERUNNER. Having established that element of the Policy the next question is whether the Disputed Domain Name is identical or confusingly similar to Complainant's mark. A side-by-side comparison of the Disputed Domain Name and the PRICERUNNER trademark demonstrates that it is confusingly similar to the mark in that it is identical except for the omission of the letter “e” to complete the word “price.”

At the threshold it is necessary only to consider "whether a domain name is similar enough in light of the purpose of the Policy to justify moving on to the other elements of a claim for cancellation or transfer of a domain name." The Panel in Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party, WIPO Claim No. D2000-1415 notes that "numerous prior panels have held [the purposes of the Policy are satisfied] when a domain name wholly incorporates a complainant's registered mark." Similarly, Magnum Piering, Inc. v The Mudjackers and Garwood S. Wilson, Sr., WIPO Claim No. D2000-1525. Panelists generally disregard the top-level suffixes as functional necessities; thus, the top-level extension is irrelevant in determining the issue under the first requirement of the Policy.

The generic Top-Level Domain “.com” in the first level portion of the Disputed Domain Name is a standard registration requirement and should be disregarded when assessing whether a Disputed Domain Name is confusingly similar to the trademark in which the Complainant has rights (see Credit Mutuel Arkea v. Domain Administration, CAC Case No. 102345); also F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. WIPO Case No. D2006-0451 (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”).

Accordingly, Complainant having demonstrated that it has trademark rights and Panel having determined that the Disputed Domain Name is confusingly similar to Complainant's PRICERUNNER trademark, the Panel finds Complainant has satisfied Para. 4(a)(i) of the Policy.

B. Rights and legitimate interests

Under paragraph 4(a)(ii) of the Policy, a complainant has the burden of establishing that a respondent lacks rights or legitimate interests in respect of the Disputed Domain Name, but this burden is light. It is sufficient in the first instance for Complainant to allege a prima facie case, and if the evidence presented is persuasive or yields a positive inference that Respondent lacks rights or legitimate interests, the burden shifts to Respondent to rebut the allegations. This concept of shifting burdens is clearly explained in Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Claim No. D2003-0455 in which the Panel held that "[s]ince it is difficult to prove a negative [. . .] especially where the Respondent, rather than complainant, would be best placed to have specific knowledge of such rights or interests—and since Paragraph 4(c) describes how a Respondent can demonstrate rights and legitimate interests, a Complainant's burden of proof on this element is light".

The Panel finds that the Complainant has presented a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. Once the complainant makes such prima facie showing, "the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. Once the burden shifts, Respondent has the opportunity of demonstrating its right or legitimate interest by showing the existence of any of the following nonexclusive circumstances:

(i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you [respondent] are making a legitimate non-commercial 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.

If a respondent proves any of these circumstances or indeed anything else that shows it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the respondent must succeed. However, if the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP": Malayan Banking Berhad v. Beauty, Success & Truth International, WIPO Case No. D2008-1393. Finally, "in the absence of direct evidence, complainant and the panel must resort to reasonable inferences from whatever evidence is in the record," Euromarket Designs, Inc. v. Domain For Sale VMI, WIPO Case No. D2000-1195.

The Complainant contends and the evidence supports the conclusion that Respondent lacks rights or legitimate interests in the Disputed Domain Name. It has not granted any rights to Respondent to register or use the PRICERUNNER trademark. See Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group, FA1804001781783 (Forum May 11, 2018) ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group. The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name."). Here, too, the Registrar has disclosed that the Registrant in this matter is Domain Admin. It is evident that Domain Admin. is not commonly known by the Disputed Domain Name and similarly must fail under Policy 4(c)(ii). See also Amazon Technologies, Inc. v. Suzen Khan / Nancy Jain / Andrew Stanzy, FA 1741129 (Forum August 16, 2017) (finding that respondent had no rights or legitimate interests in the disputed domain names when the identifying information provided by WHOIS was unrelated to the domain names or respondent's use of the same).

The Respondent has not appeared in this case. The Panel has examined the Disputed Domain Name and has found that it resolves to a website that reads: “Malicious Website Blocked.” Since there is no proof otherwise, the record supports the conclusion that Respondent lacks any right or legitimate interest as measured by the three circumstances of paragraph 4(c). See Deutsche Telekom AG v. Britt Cordon, WIPO Case No. D2004-0487 (holding that "once a complainant establishes a prima facie case that none of the three circumstances establishing legitimate interests or rights applies, the burden of production on this factor shifts to the Respondent. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP). Similarly, in Malayan Banking Berhad, supra. (holding that "[i]f the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.").

Accordingly, the Panel finds that the Respondent does not have rights or legitimate interests in the Disputed Domain Name. Thus, Complainant has satisfied Paragraph §4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Having determined that Respondent lacks rights or legitimate interests, the Complainant must then prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith. The consensus expressed in WIPO Overview 3.0, section 3.1.4. is that "the mere registration of a domain name that is identical or confusingly similar [. . .] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

Particularly probative in this case is that Complainant holds <pricerunner.com> and the Respondent registered the typosquatted <pricrunner.com> on August 9, 2021. Moreover, the Respondent has established an MX record associated with the Disputed Domain Name. Panels have repeatedly found that the activation of MX records, in circumstances where there is a high likelihood of internet-user confusion, is indicative of an intention to engage in illegitimate conduct, see, for instance, TEVA Pharmaceutical Industries Limited v. Name Redacted, WIPO Case No. D2022-3791 (‘The Panel finds that Respondent’s registration of MX records in respect of the disputed domain are further circumstances demonstrating bad faith registration and use of the disputed domain name.’) and Morgan Stanley v. Stone Gabriel, FA 1998634 (Forum June 29, 2022) ("The Panel has determined that there are MX records for the disputed domain name, therefore it might be intended for use in an email phishing scheme.").

Absent a cogent explanation from Respondent justifying its choice of domain name, this supports the conclusion that it registered the Disputed Domain Name with the purpose of taking advantage of the goodwill and reputation accruing to Complainant's trademark. Whatever value the Disputed Domain Name may have been is directly related to the goodwill Complainant has established in the international marketplace.

Paragraph 4(b) of the Policy sets out four nonexclusive circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. Of the four circumstances, paragraph 4(b)(iv) most readily applies:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the

respondent's website or other on-line 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 site or location.

The structure of the Disputed Domain Name in this case – incorporating in its second level a typosquatted version of Complainant's trademark PRICERUNNER is suggestive of an association with Complainant that it does not have. See Royal Bank of Canada - Banque Royale Du Canada v. Registration Private, Domains By Proxy, LLC / Randy Cass, WIPO Case No. D2019-2803 ("[W]here the facts of the case establish that the respondent's intent in registering or acquiring a domain name was to unfairly capitalize on the complainant's nascent [. . .] trademark, panels have been prepared to find the respondent acted in bad faith"). Such actions are clearly intended to exploit the trust and recognition associated with the reputable brand for the Respondent's own benefit.

The Disputed Domain Name resolves to a warning page that reads: "Malicious Website Blocked." Unless such a warning is given to all Internet searchers as it was to the Panel, the Respondent's clear intention is to ensnare consumers searching for the Complainant's website and thus trick them into believing they will be taken to the Complainant home page. See Auchan Holding SA v. WhoisGuard Protected / WhoisGuard, Inc. / Daniel Morgan, WIPO Case No. D2021-0797 ("The evidence outlined above that the Respondent is falsely suggesting he is connected and/or authorised by the Complainant in order to gather personal information for phishing purposes is evidence that the Responded has acted in opposition to the Complainant's commercial interests and has unduly disrupted the business of the Complainant.") See also WIPO Overview 3.0, Sec. 3.3: "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, . (ii) the failure of the respondent to . . . to provide any evidence of actual or contemplated good-faith use, . . . and (iv) the implausibility of any good faith use to which the domain name may be put."

The Panel finds that the Complainant has adduced more than sufficient evidence that the Respondent registered and is using the Disputed Domain Name in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b)(iv) as well as within the larger notion of abusive conduct.

Accordingly, having thus demonstrated that Respondent registered and is using the Disputed Domain Name in bad faith, Complainant has also satisfied paragraph4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **pricrunner.com**: Transferred

PANELLISTS

Name	**Gerald Levine Ph.D, Esq.**

DATE OF PANEL DECISION 2024-01-15

Publish the Decision