Decision for dispute CAC-UDRP-106041

Case number	CAC-UDRP-106041
Time of filing	2023-12-05 09:30:21
Domain names	turnitin.co

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Turnitin LLC

Complainant representative

Organization	Stobbs IP

Respondent

Name	oleksandr korhun

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has adduced evidence showing it is the owner of United States service mark No. 2812598 for TURNITIN, registered on 10 February 2004.

It also lists registration of US trademark No. 2812598 for the word mark TURNITIN, also registered on 10 February 2004 in Nice Classification List class 41, which includes educational services. That trademark registration is then claimed to have been followed by registration of the figurative mark TURNITIN as US trademark No. 3106828 on 20 June 2006 in class 41, and then of a similar figurative mark TURNITIN as US trademark No. 4379321 of 6 August 2013 in class 42, which includes quality control and authentication services and design and development of computer hardware and software. The Complainant similarly claims that it obtained international word and figurative trademark registrations in 2013 under the Madrid System and in the EU and China in figurative form (with TURNITIN expressed in Chinese characters for the registration in China). This series of registrations was, it claims, followed by registration of a word trademark for TURNITIN in China in 2018 and the EU in 2020 and for a new figurative TURNITIN mark in the EU in 2021.

The Panel records that, except for the 2004 US service mark for which a screenshot is provided, authoritative documentation is lacking in the Complaint for the other registrations.

The Complainant has provided screenshot evidence of its use of the <turnitin.com> domain name but not evidence of its actual registration. It claims to have registered the name in 1999.

The CAC Case Administrator's Registrar Verification shows that the disputed domain name was created on 14 November 2013 and that the current registrant is the Respondent.

FACTUAL BACKGROUND

The Complainant's Turnitin business was created in 1998 by four university students whose United States company was in 2014 sold to a private equity firm and then in 2019 acquired by the Complainant, the US media company Advance Publications Inc.

The Complainant's TURNITIN-branded software provides online plagiarism detection services and research integrity solutions for universities, corporations and publishers globally, and is notably currently licensed to over 15,000 academic institutions with over 30 million student users.

The Complainant states that its <turnitin.com> website has been in operation for over 20 years and that the TURNITIN brand is further projected over social media platforms worldwide.

While the Respondent became the registrant of the disputed domain name in 2022 -- as shown by the CAC Case Administrator's Registrar Verification -- it had, according to WHOIS screenshot evidence assembled by the Complainant using online third-party domain-name lookup services, passed through a succession of registrants since its creation in 2013. The previous registrants were variously in China, the United States and Ukraine.

The Complainant similarly showed that a popular web browser's pre-load website scanner had detected that the website page to which the disputed domain name resolves is classed by that scanner as a parked domain and that PUPs were detected by it, that is, Potentially Unwanted Programs. Screenshots generated by an online MX (Mail Exchange) lookup service suggest that an MX facility is available, although the evidence the Complainant provides does not include evidence of actual use of it.

The Complainant also offered screenshots showing that search engine results for the search term "turnitin" were all generated by or referred to the Complainant's online content or services as used by universities in particular.

Lastly, the Complainant introduced in its Amended Complaint the text of a previous UDRP ADR proceeding, WIPO Case No. D2017-0135, brought by the engineering firm R.T. Qualfe against the Respondent, Oleksandr Korhun. The Panel in that uncontested case upheld the Complaint, whereby the Respondent's registration and use of the disputed domain name <quaifeamerica.com> were found to be in the absence of legitimate rights and interests in that disputed domain name and were done in bad faith. The Panel accordingly ordered its transfer.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name <turnitin.co> is identical or confusingly similar to its TURNITIN service and trade marks, which relate to a brand that has built up considerable recognition for the Complainant's plagiarism detection services in the public domain. Indeed, the disputed domain names' stem is identical to the Complainant’s service and trade marks because the TURNITIN term is incorporated in the stem in its entirety and on its own. For its part, the gTLD suffix <.co> part of the disputed domain name is an integral technical feature and as such may be disregarded.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name. Bearing in mind the considerable reputation of the Complainant’s branded business worldwide and the way in which the disputed domain name is currently being used, there is no credible, realistic reason for the registration or use of the disputed domain name other than to take advantage of the reputation associated with the Complainant’s TURNITIN brand. To the contrary, the peripatetic registration history of the disputed domain name that the Complainant has brought into evidence, the absence of any indication that the Respondent is known by the disputed domain name, and the likelihood that the disputed domain name is being used nefariously through the parking page and e-mail facility associated with it all point to illegitimate registration and use and quite possibly phishing.

The Complainant lastly alleges bad faith registration and use in the above circumstances, with some form of illicit commercial gain being the object pursued in full awareness of the Complainant, its business and thus its rights. This was done for the purpose of wrongly turning the Complainant's reputation built on its TURNITIN-branded services to the Respondent's own financial advantage, thereby also potentially disrupting the Complainant's business through inducing error in internet users' minds. It also served to prevent the Complainant from registering the disputed domain name itself. The prior WIPO ADR Panel Decision introduced in the Amended Complaint is, finally, evidence of a pattern of the Respondent perpetrating domain name abuse targeting well-known brands.

Thus, the Complainant asserts that it has satisfied all of the UDRP's requirements.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to service marks or trademarks 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 that 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 the UDRP were met and that there is no other reason why it would be inappropriate to provide a decision.

The Panel notes that its résumé of the Parties' contentions includes for the Complainant only its arguments pertinent to reaching a decision in this proceeding; it omits in particular numerous references to past ADR Panels' Decisions. The Panel equally finds it unnecessary to consider a contention based on Decisions of some previous Panels regarding the burden of proof at to paragraph 4(a)(ii) of the Policy since this contention does not affect evaluation of the evidence that the Panel has before it in this proceeding.

PRINCIPAL REASONS FOR THE DECISION

This proceeding involves a clear case of cybersquatting thanks to the absence of one letter in the disputed domain name <turnitin.co> relative to the Complainant's <turnitin.com> domain name, which the Complainant uses in connection with its plagiarism-detection online services.

Turning to the UDRP's cumulative three-part test, the Panel finds, firstly, that the Complainant in its Amended Complaint has adequately demonstrated its rights in respect of its original 2004 service mark in the United States, such marks being recognized by the UDRP as founding rights for the purposes of its paragraph 4(a)(i). In respect of the list of trademarks the Complainant refers to in the Amended Complaint, the Panel observes that their mere claim represents a probative shortcoming on the Complainant's part; some form of documentary proof should have supported the claim. The Panel thus accepts the evidence as to the Complainant's service mark and merely takes note that the claim as to trademarks is a serious but insufficiently substantiated one. Similarly, the Complainant has not adduced direct evidence that it is the registrant of the <turnitin.com> domain name. Rather, it again claims to be its longstanding registrant, but this time the Complainant adduces a mass of indirect evidence of its rights in the <turnitin.com> domain name in the form of screenshots taken from the website that resolves to that domain name. The Panel here finds that there is an imprecise yet sufficient indication of the Complainant having established interests in the <turnitin.com> domain name.

On the basis of the findings contained in the preceding paragraph, the Panel finds that the Complainant has surmounted the first part of the UDRP's cumulative test.

As to the second part of the test, the Panel has no difficulty in finding that the Complainant has substantiated the lack of rights or interests in the disputed domain name on the Respondent's part. In particular, the wandering of the disputed domain name from one registrant to another across the globe and between different languages, combined with the practical identicality with the Complainant's domain name and brand, serve to indicate a lack of inherent connection on the registrants' behalf to the disputed domain name. Nor is the Respondent as incumbent registrant known by the disputed domain name or associated with the Complainant in any apparent way. By contrast, the technical evidence offered by the Respondent related to the parking page and e-mail status is less persuasive under this part of the UDRP test; it would have required greater technical substantiation in both respects, if the contentions concerned were central to proving this part of the UDRP test. As things stand, the Panel has been able to make its finding here independently of the contentions concerned and thus does not consider it necessary to consider that evidence further.

As to the third and final part of the UDRP test, the Panel accepts the Complainant's arguments as to: the distinctive nature of its TURNITIN brand; the incorporation of the entirety of that protected brand in the stem of the disputed domain name; the conscious

combination of the stem with a gTLD extension designed to be cognitively and semantically so close to the <.com> TLD chosen by the Complainant as to mislead internet users -- even possibly professional ones; a likelihood that PUPs revealed by the browser pre-load website scanner in relation to the parking page to which the disputed domain name resolves may well indicate action by the Respondent in selecting content items on the page with a view to gain in some manner; the potential detriment that could thereby be caused to the Complainant's business or reputation; and, last but not least, the pertinence of the 2017 WIPO Decision against the same Respondent. On the basis of these circumstances, the Panel finds that there is ample indication of both bad faith registration and use. The Panel does not consider it necessary to consider further contentions made relative to this part of the UDRP test.

In light of the above, the Panel therefore finds for the Complainant and orders transfer of the disputed domain name to it.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **turnitin.co**: Transferred

PANELLISTS

Name	**Kevin Madders**

DATE OF PANEL DECISION 2024-01-19

Publish the Decision