Decision for dispute CAC-UDRP-106229

Case number	CAC-UDRP-106229
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Domain names	samsunginternational.com, samsunghoutai.com

Case administrator

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

Complainant

Organization	SAMSUNG ELECTRONICS CO., LTD.

Complainant representative

Organization	Coöperatie SNB-REACT U.A.

Respondent

Organization	qwdq

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 names.

IDENTIFICATION OF RIGHTS

Samsung Electronics Co., Ltd. (henceforth: “Complainant”) is an internationally known company in the business of manufacturing and selling a variety of goods ranging from consumer electronics such as refrigerators, TVs and videos, to electronic gadgets such as cellular phones, computers and printers. Complainant is also one of the largest producers of other, non-consumer goods such as semiconductors. All of Complainant’s products are commercialized under their famous “SAMSUNG” trademark. Complainant was established in the Republic of Korea in 1938 and is currently one of the world’s leading electronics companies, present in more than 70 countries.

Complainant’s trademark(s) date back at least 1981, see for example:

Mark: SAMSUNG (Wordmark)

Registration number: 1164353 - United States Patent and Trademark Office (“USPTO”).

Entered on register: 11-8-1981

Registered in class 7, 9, 11

Mark: SAMSUNG (Figurative mark)

Registration number: 1634816 - USPTO.

Entered on register: 12-2-1991

Registered in class 18, 23, 24, 25

Mark: SAMSUNG (Figurative mark)

Registration number: 000506881 - European Union Intellectual Property Office (“EUIPO”).

Entered on register: 25-02-2000

Registered in class: 7, 9, 11, 14, 37, 38, 42

Mark: SAMSUNG (Wordmark)

Registration number: 001877901 - EUIPO.

Entered on register: 23-05-2002

Registered in class: 7, 9, 11, 14, 37, 42

Mark: SAMSUNG (Wordmark)

Registration number: TMA255809 – Canadese trademark.

Entered on register: 13-02-1981

Registered in class: 7, 9, 11

FACTUAL BACKGROUND

According to the available WHOIS information, the disputed domain names have been registered on the 18th of August, 2023.

Aside from the “SAMSUNG” trademark, the Respondent has added the geographic term “international” to the first disputed domain name. The second disputed domain name contains the word 'houtai', which is Chinese for (computing) back-end.

In addition, on the first disputed domain name, <samsungInternational.com>, Respondent has placed a prominent copy of Complainant's visual mark / logo at the top of the page.

Below that, Respondent has placed a login form, asking users to "Login with mobile to become a member" and provide their mobile phone number, e-mail address and password.

The first disputed domain name is further mentioned on Facebook by a page promising to allow visitors to "MAKE MONEY from HOME". It is also shown in various YouTube videos by different users. These videos demonstrate the operation of the website and constitute evidence that the website is a fake investment website.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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).

The disputed domain names incorporate the “SAMSUNG” trademark(s) in its entirety. Panels have held domain names to be confusingly similar if the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name. In that sense, the Panel refers to the resolution in Bayerische Motoren Werke AG (“BMW”) v. Registration Private,

Domains By Proxy, LLC / Armands Piebalgs, Case No. D2017-0156:

> "[…] Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy, "when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" (Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale, WIPO Case No. D2000-0662)."

Aside from the "SAMSUNG" trademark, the Respondent has added the geographic term "international" to the first disputed domain name. According to section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element"."

The Panel refers to WIPO Case No. D2013-0555 (<samsung-phone-sale.com>):

> "The Panel considers that the Complainant's SAMSUNG registered trademark is instantly recognizable within the disputed domain name and the descriptive words "phone" and "sale" do not sufficiently differentiate the disputed domain name from the Complainant's trademark so that confusion will not arise."

In fact, geographical additions actually increase the likelihood of confusion, as this will confuse Internet users who will think that the websites connected to the disputed domain names may represent the websites of the (local branches of) the Complainant's business. See for example WIPO Case D2012-2528 <usnestle.com>:

> "Numerous UDRP panels have found that the addition of a geographic name to a domain name that contains a complainant's trademark "increase[s] the likelihood of confusion between the domain name […] and the mark […]"."

The second disputed domain name contains the word 'houtai', which is Chinese for (computing) back-end (https://chinese.yabla.com/chinese-english-pinyin-dictionary.php?define=houtai). This also does not sufficiently differentiate the disputed domain name from the Complainant's Trademark(s).

As was held in CAC-UDRP-104922 <samsungsemiconductor.com> the extension ".com" is not to be taken into consideration when examining the similarity between the Complainant's trademark and the disputed domain names.

Based on the foregoing, the disputed domain names must be considered confusingly similar to the trademark in which the Complainant has rights.

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 names (within the meaning of paragraph 4(a)(ii) of the Policy).

The Respondent has no rights or legitimate interests to use the Complainant's Trademark(s) in a confusingly similar manner within the disputed domain names. Complainant has no relationship whatsoever with Respondent and has never licensed or otherwise authorized the Respondent to use the "SAMSUNG" trademark in the disputed domain names. The Complainant has exclusive trademark rights which predate the registration of the disputed domain names by several decades. The Respondent cannot demonstrate any legitimate offering of goods or services under the "SAMSUNG" mark.

In the absence of a license or permission from the Complainant concerning the use of its trademarks, no actual or contemplated bona fide or legitimate use of the disputed domain names can reasonably be claimed. See LEGO Juris A/S v. DomainPark Ltd, WIPO Case No. D2010-0138; Sportswear Company S.P.A. v. Tang Hong WIPO Case No. D2014-1875 and WIPO Case No. D2019-1273 (Pandora A/S v. Yan Li) par 6.B.

In addition, on the first disputed domain name, <samsungInternational.com>, Respondent has placed a prominent copy of Complainant's visual mark / logo at the top of the page.

Below that, Respondent has placed a login form, asking users to "Login with mobile to become a member" and provide their mobile phone number, e-mail address and password.

Generally, as stated in the WIPO Overview 3.0, panels have found it relevant, when determining a Respondent to have no rights or legitimate interests: "(ii) whether it is clear to Internet users visiting the Respondent's website that it is not operated by the complainant".

Respondent has not added any type of "Disclaimer" anywhere on any of the disputed domain names which clearly and unambiguously states Respondents lack of a commercial relation with Complainant.

As the WIPO Jurisprudential Overview 3.0 states: "2.13.1 Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent."

As was held in the recent case CAC 105810 Tommy Hilfiger Licensing B.V. v. Client Care (Web Commerce Communications

Limited) (<tommyhilflgercanadaca.com> and 83 other domain names): "Impersonation is not fair and as such does not create any rights or legitimate interests."

See also: Forum decision FA 156251 <aig-ma.com>: “In effect, Respondent attempted to pass itself off as Complainant online. Such blatant unauthorized use of Complainant’s mark is evidence that Respondent has no rights or legitimate interests in the disputed domain name.”

But Respondent's use of the disputed domain names has gone even further than impersonation and passing off.

Complainant has located several internet locations where the domain names are used in connection with obvious attempts at phishing and scam activity.

The disputed domain names have been used in connection with a fake "Samsung International" Android App, uploaded to the Google Play Store. This app refers to a false privacy policy of "Samsung International" hosted on the first disputed domain name https://www.samsunginternational.com/samsunginterpp.html (Archive URL: https://archive.ph/6nM4m) which furthers the fraudulent impersonation of Complainant.

The first disputed domain name is further mentioned on Facebook by a page promising to allow visitors to "MAKE MONEY from HOME". It is also shown in various YouTube videos by different users. These videos demonstrate the operation of the website and constitute evidence that the website is a fake investment website.

After logging in, the website promises users to offer the ability to purchase Samsung Galaxy devices and apparently ‘loan’ those back to receive interest payments back from Complainant and/or the State Bank of India.

The website also contains a fake SBI (State Bank of India) "Guarantee Announcement", as well as a fake message from the Minister of Commerce and Industry in India, approving the establishment of the 'online financial platform project'.

Furthermore, several different user accounts and phone numbers have been identified to promote this fake investment website.

Complainant references CAC Case 101578 (2017-08-09, <ARLEFOOD.COM>), wherein it was outlined that:

> “In light of the evidence submitted, it is clear that the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or service or for a legitimate noncommercial or fair use. To the contrary, it appears that the Respondent has used the disputed domain name to impersonate the Complainant and fraudulently attempt to obtain payments and sensitive personal information. The use of the disputed domain name in connection with such illegal activities cannot confer rights or legitimate interests on the Respondent.”

Similar conclusions were reached in relation to other 'investment scams' (see in relation to a bank guarantee scam: CAC-UDRP-102136 (<PEPSICOFINANCELTD.ORG>)).

In light of above, the decision in WIPO Case D2008-1308 <vesteygroup.com> is especially relevant:

> "6.8 As has already been described, the Panel accepts that the Domain Name is being, and at all relevant times has been, used without the Complainant's consent by an entity or entities unknown as part of a broader scheme to falsely impersonate the Complainant. That impersonation has been with a view to the furtherance of some fraud or deception upon the public. Such activities do not provide rights or legitimate interests in a domain name. It is also hard to conceive of a more obvious example of bad faith registration and use."

The Complainant tried to solve this matter by sending a phishing report to the Registrar of the disputed domain names, but did not receive any reply.

Respondent has not (as an individual, business, or other organization) been commonly known by the domain name.

Per paragraph 2.3 of the WIPO Jurisprudential Overview 3.0, the respondent must be “commonly known” by the relevant moniker apart from the domain name. As such, respondents are required to produce concrete credible evidence that they are commonly known by the domain name.

No such credible evidence is shown anywhere on the disputed domain names by the Respondent. Furthermore, the Respondent does not hold any genuine trademark or service mark right. Use of “SAMSUNG” on the Respondent’s website, regardless of if the use is in a “trademark sense”, does not itself prove that the Respondent, or any business or organization represented by it, is “commonly known” by that expression (see also World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe, WIPO Case No. D2008-0642).

Based on the foregoing, it is clear that the Respondent has not been commonly known by the domain names prior to the registration of the domain names.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

The disputed domain names were registered in bad faith by Respondent, knowing the Complainant trademarks when registering the domains, and targeting those marks.

The content of the (active) website to which the first disputed domain name <samsungInternational.com> directs, in particular the prominently places logo of Complainant, clearly demonstrates that the Respondent has sought to impersonate and pass itself off as Complainant.

Registration of a domain name for impersonation purposes constitutes registration and use in bad faith (see sections 2.5.1, 2.6.2 and 3.1 of the WIPO Overview 3.0). See e.g. CAC Case 105517 (Karhu Holding B.V. v. Web Commerce Communications Limited), where the Panel found bad faith to exist, citing prior decisions where it was held that creating a website that appears to be a website for a complainant is “likely fraudulent” and “indicates an intent to deceive or, at a minimum, act in bad faith with the intent for commercial gain.”

As described above, Respondent has also used the first disputed domain name to refer to a fake investment website, which promised users the ability to receive interest payments. It has also uploaded a fake privacy policy on its website that further impersonated Complainant.

The Respondent's conduct amounts to blatant bad faith (see e.g. CAC-UDRP-105769: "The Respondent has acted with the sole purpose of acquiring undue profit through fraud and theft. In this light, the Respondent’s use of the domain in bad faith is blatant.").

Of the non-exhaustive circumstances leading to bad faith which are enumerated in the Policy, specifically paragraph 4(b)(iv) applies:

(iv) By using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site:

According to section 3.1.4 of the WIPO Overview 3.0, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (in particular domain names which incorporate the trademark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can itself create a presumption of bad faith.

The Complainant has been the rightsowner of the “SAMSUNG” trademarks since at least 1981. The disputed domain names have been registered on the 18th of August, 2023, decades after Complainant commenced using its “SAMSUNG” trademarks.

Moreover, in this case, the prominent inclusion of the Complainant's logo on the website connected to the first disputed domain name proves that Respondent was aware of the Complainant and its trademarks and targeted them, and clearly creates a likelihood of confusion for Internet users who visit Respondent’s domain name.

See e.g. CAC-UDRP-104922 <samsungsemiconductor.com>, where the Panel concluded that "at the time of registration of the disputed domain name, the Respondent was aware of the Complainant’s SAMSUNG trademarks and has intentionally registered the domain name in order to create confusion with the Complainant’s SAMSUNG trademarks."

Additional factors considered by the Panel in that case were the lack of any evidence of actual or contemplated good faith use of the disputed domain names, that the domain names contained the internationally well known SAMSUNG trademarks to which it added a generic term, and that Respondent has no business relationship with Complainant, nor was it ever authorized to use a domain name similar to the SAMSUNG trademarks, as well as the inactive page to which the domain name resolved.

In the circumstances set out above, namely the Respondent operating a fake investment website, Complainant also refers to CAC Case 104871 <mochilaospreychile.com>:

> “Finally, this is not a case of balancing the interests of competitors or other legitimate commercial parties, rather, it concerns an obvious attempt to mislead and defraud consumers, simply using the Complainant’s famous name to give them a false sense of security they are dealing with Complainant. Justerini & Brooks Ltd v. "Colmenar", WIPO Case No. D2000-1308 (December 11, 2000) (“[G]iven the distinctiveness and notoriety of complainant’s name, it would not be chosen legitimately by another trader except to create a false impression.”). Therefore, the Panel concludes that the Respondent registered and is using the Disputed Domain Names in bad faith per paragraph 4(b)(iii) or (iv) of the Policy.”

In CAC-UDRP-102136 (<PEPSICOFINANCELTD.ORG>) bad faith under paragraph 4(b)(iv) was found, in similar circumstances as in the present case, as "Respondent also attempted to intentionally attract, for commercial gain (bank guarantee scam) internet users to its website."

The second disputed domain name of Respondent, at the time of writing this Complaint, resolves to an inactive website. According to section 3.3. of the WIPO Overview 3.0., panelists have found that the non-use of a domain name, including a “blank” page, does not prevent finding of bad faith under the doctrine of passive holding. Relevant factors in the present case are: “(i) the degree of distinctiveness or reputation of the complainant’s mark and […] (iii) the respondent’s concealing its identity or use of false contact details, and (iv) the implausibility of any good faith use to which the domain name may be put.”.

It is unfortunate that the Registrar offering this privacy service, seems not to have taken action on the basis of the abuse report sent on behalf of Complainant, which alerted the registrar to the Complainant's rights and to evidence of impersonation, and

scam/phishing techniques. A registrar is supposed to constitute the first line of defence against harmful domain name abuse.

In addition, the registrar verification information provided by the registrar during the present proceeding, states that the registrant's name is "qwe qwe", from the city of "dqwq", with postal code "qweqeq", in Hong Kong. Respondent has clearly provided false WHOIS information. As the Panel held in WIPO Case D2013-1755 (Goyard St-Honoré v. DFASDF ASDF),

> "registrars should be vigilant to ensure that registrants of domain names are either a recognizable individual or a corporate personality. Otherwise, it makes it impossible for a trademark holder to commence any action – against blatant infringers – other than through recourse under the Policy which may not always provide sufficient relief against a counterfeiter."

As for factor 'iv': the second disputed domain name contains the word 'houtai', which is Chinese for (computing) back-end (https://chinese.yabla.com/chinese-english-pinyin-dictionary.php?define=houtai), which indicates it is likely used for (hosting of) a control environment relating to the fake investment website connected to the first disputed domain name.

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

The prominent inclusion of the Complainant's logo on the website connected to the first disputed domain name proves that Respondent was aware of the Complainant and its trademarks and targeted them, and clearly creates a likelihood of confusion for Internet users who visit Respondent’s domain name.

Additional factors considered by the Panel in that case were the lack of any evidence of actual or contemplated good faith use of the disputed domain names, that the domain names contained the internationally well known SAMSUNG trademarks to which it added a generic term, and that Respondent has no business relationship with Complainant, nor was it ever authorized to use a domain name similar to the SAMSUNG trademarks, as well as the inactive page to which the domain name resolved.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **samsunginternational.com**: Transferred
2. **samsunghoutai.com**: Transferred

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2024-03-14

Publish the Decision