Decision for dispute CAC-UDRP-106263

Case number	CAC-UDRP-106263
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Domain names	tennis2business.com

Case administrator

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

Complainant

Name	Markus Mike Winiger

Complainant representative

Organization	Meyerlustenberger Lachenal AG

Respondent

Organization	CATCHDADDY LLC

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 Markus Mike Winiger is the owner of various trademark registrations such as:

- Swiss Trademark CH 799200 tennis2business, filed on 28.03.2023 and granted on 21.06.2023 for services in classes 35 and 41;

- German Trademark DE 302023008082 tennis2business, filed on 09.06.2023 and granted on 12.01.2024 for services in classes 35 and 41;

- European Trademark EUTM 018886349 tennis2business, filed on 09.03.2023 and granted on 20.10.2023 for services in classes 35 and 41;

- International registered trademark IR 1761660 tennis2business, registered on 29.08.2023 for services in classes 35 and 41, with priority of the Swiss application.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Markus Mike Winiger (hereinafter: the Complainant) is the owner of T2B GmbH, a company registered under the laws of Switzerland, which organises tennis events for entrepreneurs since July 2021 and in this respect registered the domain <tennis2business.ch> on 9 March 2020.

The Complainant is also the owner of several "tennis2business" trademarks, mentioned before.

Because the Complainant also wants to address international customers, it is dependent on owning the domain <tennis2business.com>.

When visiting the domain <tennis2business.com>, it redirects immediately to the URL https://dan.com/buy-domain/tennis2business.com?redirected=true stating that the domain is for sale by dan.com for USD 4,995.

The domain is also offered for sale on the websites www.dynadot.com and www.name.com. On www.name.com the domain is offered for an even higher price, namely for USD 5,744.25.

According to "WHOIS", <tennis2business.com> was registered on 29 March 2023 via the registrar Dynadot.com, 210 S Ellsworth Ave, #345 San Mateo, CA, 94401 US.

The registration date of the domain coincides with the publication of the Swiss trademark CH 799200 tennis2business, which was filed on 28 March 2023 and was published the same day in the public register of the Swiss trademark office.

This chronological coincidence indicates that the registrant is monitoring the trademark register to pre-empt the registration of popular top-level domains. The Respondent has not initiated any use of the domain and is offering it for sale exclusively ever since.

In an attempt to find an out-of-court solution, the Complainant tried to contact the Respondent directly. However, upon enquiry Dynadot informed that no information about the Respondent of the domain can be released. Therefore, it was also not possible to check whether the Respondent has already been involved in other cases of cybersquatting.

After the complaint was submitted, the CAC initiated a registrant verification. This revealed that the Respondent had chosen double privacy encryption, as the name is still displayed as "Registration Private" even after verification. However, the verification revealed that the Respondent had entered "CATCHDADDY LLC" as the company name.

CATCHDADDY LLC was recently involved in three UDRP proceedings as a respondent, each case being decided in favour of the complainant and the domain being transferred to him (c.f. Belmond Management Limited v. Registration Private, CATCHDADDY LLC, WIPO Case No. D2023-5064, ZipRecruiter Inc. v. Registration Private, CATCHDADDY LLC, WIPO Case No. D2023-4827, Hacona KFT. V. Registration Private, CATCHDADDY LLC, WIPO Case No. D2023-4506).

This and the fact that the domain <tennis2business.com> was registered immediately after the publication of the tennis2business trademark and is offered on three different portals for sale indicates that the Respondent is cybersquatting.

Legal arguments

According to Art. 4a UDRP, the complainant shall prove that (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) the respondent has no rights or legitimate interest in respect of the domain name; and (iii) the domain has been registered and is being used in bad faith i.e. the complainant must assert the extent to which the domain is registered and used in bad faith (Acubit A/S v. Ting Zhao, D2019-3128, C).

The Complainant is the owner of the trademark "tennis2business", which is also identical to the disputed domain <tennis2business.com>, since the addition in a domain name of gTLD's (like ".com") is inapt to distinguish the domain name from the trademark (Viceroy Cayman Ltd. v. Anthony Syrowatka, WIPO Case No. D2011-2118, 6. A.)

The Complainant also never transferred any rights of use on his trademark to the Respondent. The Respondent has no rights nor legitimate interest in respect to the disputed domain name.

Based on the date of registration and the overpriced offer for sale (exceeding the out-of-pocket costs of the registration by far), it is clear that the domain was both, registered and used in bad faith within the meaning of Art. 4b(i) and Art. 4b(ii) Policy.

The disputed domain name was registered in bad faith

The Complainant is the owner of numerous "tennis2business" trademarks, which are registered in Switzerland, Germany, the

European Union and the United Kingdom and claiming protection also in the US. The Swiss trademark was registered with the competent trademark office on 28 March 2023. On the same day, the application was published on the database of the competent institution, the Institute for Intellectual Property (IPI), making it publicly available.

The domain <tennis2business.com> was registered on 29 March 2023, i.e. one day after the registration of the identical trademark "tennis2business" in Switzerland.

According to the established case law of the WIPO Arbitration Chamber, a domain that completely takes over the name of an existing trademark indicates bad faith (in place of many where already the partial adoption of a trademark in the domain showed bad faith Publix Asset Management Company v. Milen Radumilo, WIPO Case No. D2023-2874, C; c.f. WIPO Jurisprudential Overview 3.0, 3.1.1).

Until today, almost one year after the domain's registration, no goods or services are offered under the domain <tennis2business.com>, except the domain itself for fantasy price.

This proves that the domain was registered according to Art. 4b (i) Policy for the sole purpose of reselling it at a way too high price to the complainant who is the owner of the trademark.

Furthermore, the Complainant has already been using its trademark commercially via the domain <tennis2business.ch> for several years prior to the trademark application, namely since 2021.

According to Art. 2 (b) Policy, by applying to register a domain, the Respondent represents and warrants that to his knowledge the domain name will not infringe upon or otherwise violate the rights of any third party.

The Respondent knew (or at least should have known) that the trademark "tennis2business" exists and is actively used. According to several panel decisions, also the respondent who (deliberately) fails to search and/or screen registrations against available online databases would be responsible for any resulting abusive registrations, the so-called concept of "willful blindness". (in place of many TTT Moneycorp Limited v. Privacy Gods/ Privacy Gods Limited, WIPO Case No. D2016-1973Viceroy Cayman Ltd. v. Anthony Syrowatka, WIPO Case No. D2011-2118; c.f. WIPO Jurisprudential Overview 3.0, 3.2.2 and 3.2.3).

In addition, the Respondent used a privacy service twice in order to conceal his identity. The domain was registered through a privacy service. The "disclosed" underlying registrant turned out to be yet another privacy service. The verification merely stated that the organization was "CATCHDADDY LLC". Also, such “multilayered obfuscation” supports an inference of bad faith, e.g., as an attempt to shield illegitimate conduct from a UDRP proceeding (Hacona KFT. V. Registration Private, CATCHDADDY LLC, WIPO Case No. D2023-4506, 6; c.f. WIPO Jurisdictional Overview 3.0, 4.4.6).

The behavior displayed by the Respondent in this case is almost identical to that in the proceeding Hacona KFT. V. Registration Private, CATCHDADDY LLC, WIPO Case No. D2023-4506. In that case, the Respondent registered the domain <ocoono.com> (which is identical to the Complainant's trademark) the same day of the Complainant's trademark application. The domain resolved to the website www.dan.com on which it is offered for sale for USD 4,995. In this case, the WIPO Panel concluded that the domain was clearly registered in bad faith, as it was registered on the same day as the trademark application.

However, this was not the only case in which CATCHDADDY LLC was involved, which indicates that this company is enabling domain squatters to prevent trademark owners from registering their trademarks as a corresponding domain. This corresponds to the requirement of registration in bad faith within the meaning of Art. 4b (ii) Policy.

The disputed domain name is used in bad faith

The disputed domain name <tennis2business.com> was last updated on 7 August 2023.

At this time also the EU trademark had been filed and published in the database of WIPO and the EUIPO.

At the time of the update, the Respondent would have had again the opportunity to check with little effort, whether trademarks of the same sign had been registered or applied for.

This is also evidence of bad faith, as it became obvious to the Respondent that the Complainant would register his trademark internationally and therefore it was also obvious that the Respondent would have an interest in the domain <tennis2business.com>.

In addition, the sales price was set disproportionately high. According to Art. 4b (i) Policy, the setting of a sales price that exceeds the out-of-pocket costs is considered evidence of use in bad faith.

The price range for domains is generally in the two-digit range, rarely in the three-digit range. The disputed domain name <tennis2business.com> is being offered for sale for a multiple of the usual price.

The sales price of USD 4'995 has been considered as being certainly in excess of the costs related to registering the disputed domain (unless proven otherwise) by the WIPO Panel in other decisions (ZipRecruiter Inc. v. Registration Private, CATCHDADDY LLC, WIPO Case No. D2023-4827, C).

Other than that, the domain is also offered for sale on the websites www.name.com and www.dynadot.com, whereby the selling price on www.name.com is around USD 1,000 higher than on www.dan.com and www.dynadot.com. This proves all the more that

the Respondent is using the domain solely for the purpose of reselling it in bad faith in the meaning of Art. 4b (i) Policy.

Based on the above, it is evident that the Respondent registered the disputed domain name <tennis2business.com> in bad faith and is also using it in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are reproduced above.

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

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

1. RIGHTS

The disputed domain name is identical to the Complainant's tennis2business registered trademarks. The first element is clearly met.

2. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, they have submitted no information on possible rights or legitimate interests they might hold. On its part, the Complainant has submitted information and arguments which, prima facie, allow it to be reasonably assumed that the Respondents have no rights or legitimate interest in the Domain Name in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

“As mentioned, [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed domain name, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists.“ WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

Furthermore, the circumstances of the case allow the Panel to reasonably rule out the existence of legitimate rights or interests on the part of the Respondent, since the disputed domain name was registered immediately after the trademark applications by the Complainant and is put up for sale for a large sum of money.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

3. BAD FAITH

The Respondent has, as a result of its default, not invoked any circumstances which could invalidate the Complainant´s allegations and evidence with regard to the Respondents’ registration and use of the disputed domain name in bad faith.

The Complainant has submitted evidence that Respondent registered the disputed domain name immediately within days after Complainant's trademark applications were filed. Moreover, the Respondent has already been ordered in other decisions for similar conduct, which clearly constitutes a pattern of conduct.

All of this, coupled with the fact that the disputed domain name is for sale for a large sum of money, constitutes a clear indication that the Respondent has acted in bad faith in registering and using the disputed domain name.

It has, therefore, been satisfactorily demonstrated to the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **tennis2business.com**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2024-03-22

Publish the Decision