Decision for dispute CAC-UDRP-106300

Case number	CAC-UDRP-106300
Time of filing	2024-02-29 10:05:04
Domain names	SUPERFLASHLOAN.COM

Case administrator

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

Complainant

Organization	Intesa Sanpaolo S.p.A.

Complainant representative

Organization	Intesa Sanpaolo S.p.A.

Respondent

Name	Linoy Binyamin

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

Identification Of Rights

The Complainant has provided evidence of ownership of the following trademarks:

- European trademark “SUPERFLASH” n. 9617887 registered on August 30, 2011, duly renewed and designating goods and services in classes 9, 35, 38, 41 and 42;

- European trademark “SUPERFLASH & design” n. 10263218 registered on November 26, 2012, duly renewed and designating goods and services in classes 9, 16, 35, 36, 38, 41 and 42;

- European trademark “SUPERFLASH & design” registered on May 3, 2011, duly renewed and designating services in classes 35, 38, 41 and 42.

FACTUAL BACKGROUND

The Complainant, Intesa Sanpaolo S.p.A., is an Italian banking group founded in 2007 and with branches in a large number of countries worldwide. The Complainant has provided evidence of ownership of the following registrations for the marks

"SUPERFLASH".

The disputed domain name was registered on December 28, 2023 and resolves to a registrar parking page.

PARTIES CONTENTIONS

COMPLAINANT

The disputed domain name is confusingly similar to the Complainant's trademarks SUPERFLASH and its domain names. The Complainant contends that the marks are entirely reproduced in the domain name, with the addition of the generic term "loan", referring to financial services offered by the Complainant.

Per the Complaint, the Respondent is not known by the disputed domain name. The Complainant contends that Respondent is not authorized by the Complainant in any way and that Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant equally asserts that the Respondent is not commonly known by the disputed domain name and that no fair or non-commercial use of the domain name can be found.

As regards the bad faith of the Respondent, the disputed domain name includes the distinctive trademark SUPERFLASH. It is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Furthermore, the Complainant argues that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website. Therefore, the Complainant deems that the Respondent has registered and is using the domain name at issue in order to intentionally divert traffic away from the Complainant's web site.

RESPONDENT

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

Notwithstanding the fact that no Response has been filed, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

(i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has

rights; and

(ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark for the Complainant to succeed.

The Complainant, Intesa Sanpaolo S.p.A., is an Italian banking group founded in 2007 and with branches in a large number of countries worldwide. The Complainant has provided evidence of ownership of the registrations for the marks "SUPERFLASH".

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name".

Also, according to section 1.7 of the WIPO Overview 3.0, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

The Panel finds for the Complainant in that the disputed domain name reproduces the marks of the Complainant in their entirety, followed by the generic term "loan", which refers to the Complainant's financial services. The mere addition of that term does nothing to diminish the likelihood of confusion, quite to the contrary. Indeed, the Internet user of average attention will very likely believe that the disputed domain name originates from or is endorsed by the Complainant.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark.

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the respondent's rights or legitimate interests in the disputed domain name:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview 3.0, which states: "[…] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The evidence on record does not show that the Respondent was commonly known, as an individual or an organization, by the disputed domain name.

The Panel also accepts, in the absence of a rebuttal from the Respondent, that the Respondent uses the Complainant's trademarks in the disputed domain name without authorization from the Complainant.

Equally, the Panel finds that the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name. The fact that the disputed domain name directs to a parking page of pay-per-click commercial links is, in the opinion of the Panel, a clear indicator that the domain name is not used in a legitimate noncommercial or fair manner.

Prior panels have in certain cases recognized the legitimacy in use for PPC pages where the domain name consists of a dictionary word or phases and the PPC links relate to such words or phrase, however no such circumstances apply in this instant case.

Although, taken separately, the terms "super", "flash" and "loan" have their own meaning in English, the adjunction of the first two in

the term “superflash” is not ordinary and is distinctive. The Panel is not aware of any meaning for the term “superflash” as included in the disputed domain name. Accordingly, the Panel finds no evidence of a bona fide offering or goods or services or demonstrable preparations to use per Policy 4(c)(i) and the Respondent does not have rights or legitimate interests with respect of the domain name thereunder.

In the Panel’s view such commercial use cannot – from the outset – be considered a legitimate, noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy.

Therefore, the Panel concludes that the Respondent has no right or legitimate interests in the disputed domain name and therefore finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registration and Use in Bad faith

For the purpose of Paragraph 4(a) (iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the domain names in bad faith:

(i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the holders documented out-of-pocket costs directly related to the domain name; or

(ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or

(iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on the holder's website or location.

Although the Complainant did not put forth any evidence as to the renown of its SUPERFLASH mark, the evidence on the record shows that the Respondent was certainly aware of the existence of the Complainant and of the rights of the Complainant, and that the Respondent, by registering and using the disputed domain name has intentionally attracted internet users by creating a likelihood of confusion with the Complainant's trademark.

Given the long-lasting reputation of the Complainant’s company as well as the structure of the disputed domain name itself, the Respondent cannot have ignored the Complainant’s earlier rights, neither can the Respondent have ignored that, when registering the domain name, they would do so in violation of the Complainant’s earlier rights.

The Complainant also provided evidence that the Respondent is using the disputed domain name to lead to a website featuring PPC. This is indicative of bad faith, even if the webpage is configured automatically by the registrar or any other party. With respect to “automatically” generated PPC-links, previous panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.

The Complainant puts forth that the Complainant has filed several UDRP complaints at different arbitration centers over the years. However, the Panel sees no inference to be drawn from that fact, which is unrelated to the present proceeding, the disputed domain name or the Respondent.

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith, and therefore finds that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SUPERFLASHLOAN.COM**: Transferred

PANELLISTS

Name	**Arthur Fouré**

DATE OF PANEL DECISION 2024-04-04

Publish the Decision