

Decision for dispute CAC-UDRP-106428

Case number CAC-UDRP-106428

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Domain names Calco.com

Case administrator

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

Complainant

Organization Calco Group B.V.

Respondent

Name Palic Popiol

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 submitted evidence that it is the owner of the following trademarks (the "Trademarks"):

- EU word trademark "CALCO", filing nr. 016923013, filed on June 28, 2017, registered on October 31, 2017, for Nice classes 9, 35, 38, 41 and 42;

- Benelux word trademark "CALCO", filing nr. 1047340, registration nr. 751619, filed on January 12, 2004, registered on August 10, 2004, for Nice classes 9, 35 and 38.

FACTUAL BACKGROUND

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

The Complainant states to be an IT consultant agency in Amsterdam, mainly active in the Netherlands and having approximately 600 co-workers.

The Complainant has submitted evidence that it is the owner of the CALCO Trademarks as referred to above.

The Complainant claims to be the owner of the domain name <calco.nl>.

The disputed domain name <calco.com> was first registered on January 12, 1998. The Complainant obtained the disputed domain name <calco.com> on September 10, 2019.

On March 23, 2024, the disputed domain name was transferred to the Respondent under fraudulent circumstances. The disputed domain name was transferred from the Complainant's Registrar "TransIP" to the Respondent's Registrar "Hostinger", after the hacking of the Complainant's account with TransIP. The hacker obtained the authentication code necessary for the domain name transfer. After the transfer of the disputed domain name to the Respondent, a ransom e-mail was sent to the CEO of the Complainant on April 4, 2024, in which the sender requested payment of 20 bitcoins by the following day (April 5, 2024) and in which the sender threatened to show explicit content on the website linked to the disputed domain name if payment would not be received

in time. This ransom e-mail was sent by a person identified in the e-mail as “fabianvantveer” (using the e-mail address fabianvantveer@proton.me), and as “The League of Extraordinary Gentlemen” and “Liga Dzentelmenow”.

Besides the disputed domain name, the Complainant's Dutch domain name <calco.nl> was also fraudulently transferred (also on March 23, 2024). This Dutch domain name was also mentioned in the ransom e-mail of April 4, 2024. However, the Dutch domain name has since been returned to the Complainant, following an intervention by the .nl naming authority SIDN.

The Complainant tried to contact the Respondent and its registrar Hostinger various times to recover the disputed domain name, without any success.

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 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. Confusing similarity

The Panel notes that the disputed domain name incorporates the entirety of the Complainant's CALCO Trademarks.

The gTLD ".com" may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

For these reasons, the Panel concludes that the disputed domain name is identical to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that

the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then must weigh all the evidence, with the burden of proof always remaining on the complainant.

The Complainant argues that:

- The disputed domain name was transferred to the Complainant under fraudulent circumstances, as a result of a hack of the Complainant's account with its Registrar "TransIP". Following this transfer, a ransom email was sent to the Complainant, requesting payment of 20 Bitcoins, and threatening to publish explicit content on the website linked to the disputed domain name. Confiscating and using a domain name to blackmail the complainant does not constitute a bona fide use of the domain name. The Complainant adds that there is a risk that the Respondent will use the disputed domain name for other illegal, inappropriate and/or harmful purposes.
- The Respondent is not part of the Complainant's group, is not affiliated to the Complainant, is not known under the disputed domain name, and was not authorised by the Complainant to register or use the disputed domain name.

The Respondent did not file an administratively compliant (or any) response. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so).

The Panel finds that the Respondent does not appear to have any rights or legitimate interests in the disputed domain name from the following facts:

- There is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers. On the contrary, the Respondent uses the disputed domain name for illegal activities. The Respondent obtained the disputed domain name following a hack of the Complainant's account with its Registrar. After this transfer, a ransom email was sent to the Complainant with the request to pay 20 Bitcoins and with the threat to publish explicit content on the website linked to the disputed domain name. This cannot be seen as a bona fide activity and does not create any legitimate rights for the Respondent. On the contrary, such activities are clearly illegal and even fraudulent. Illegal and fraudulent activities can never confer rights or legitimate interests in a disputed domain name. In this sense, the second and third elements of paragraph 4(a) of the Policy are closely interconnected.
- The Respondent did not show to have any trademark rights or other rights in the disputed domain name or in the term "CALCO".
- There is no evidence at all that the Respondent is or has been commonly known by the disputed domain name or by the term "CALCO". The WHOIS information does not provide any information that might indicate any rights of the Respondent to use the term "CALCO". The Respondent does not seem to have any consent or authorisation to use the CALCO Trademarks or variations thereof and does not seem to be related in any way to the Complainant.
- The Respondent did not contest any of the arguments of the Complainant. The Respondent did not file any response. The Respondent did not provide any explanation or evidence of the actual use or the intended use of the disputed domain name. Given the substantiated claims of the Complainant, and in particular the trademark rights of the Complainant and the well documented claims of the Complainant regarding the fraudulent transfer of the disputed domain name and regarding the fraudulent use of the disputed domain name for a ransom scheme, the Panel expected the Respondent to provide appropriate evidence and convincing arguments of the rights or legitimate interests or any type of claim in the disputed domain name. In light of a credible, well-documented and convincing claim by the Complainant (constituting a so called 'prima facie' case), the Panel finds that the response should also be inherently credible and supported by evidence or at least by an explanation of the circumstances of the case.

In sum, the Panel finds that the Complainant did make a 'prima facie' case that the Respondent lacks rights or legitimate interests in the disputed domain name. In particular, the Panel finds that the Complainant provided sufficient evidence that the Respondent is not related to the Complainant; that the Respondent did not have any authorisation to use the Complainant's CALCO Trademarks in the disputed domain name; that the disputed domain name was transferred illegally to the Respondent; and that the disputed domain name was used for fraudulent purposes to blackmail the Complainant. The Respondent failed to provide evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name.

3. Bad faith

The Complainant argues that the disputed domain name was registered and used by the Respondent in bad faith because:

- The Respondent was only able to register the disputed domain name through unauthorised account access/hacking.

- The Respondent used Complainant's address details - with the wrong street number - and provided non-existent contact details such as the phone number 62345678. The Respondent is in no way connected to the Complainant and/or its address. This shows that the Respondent knew and targeted the Complainant.
- The Complainant used the disputed domain name to blackmail the Respondent.

The Panel weighs these arguments and facts as follows:

- The Respondent obtained the disputed domain name following the hacking of the account of the Complainant at its Registrar. In other words, the registration of the disputed domain name by the Respondent was a result of illegal actions and constitutes a bad faith domain name registration.
- After the transfer of the domain name, the domain name was used to blackmail the Complainant. In other words, the disputed domain name was used for fraudulent activities, which constitutes a bad faith use of the domain name.
- While the name of the Respondent was not mentioned in the blackmail-email, from the facts of the case and from the lack of any response or any explanation by the Respondent, the Panel decides that the Respondent was aware of should have been aware of the fraudulent transfer/registration of the domain name and of the fraudulent use of the domain name for blackmailing purposes.
- Moreover, from the Registrar Verification, it follows that the Respondent uses the address "Gatwickstraat 23, at 1043 Amsterdam, the Netherlands", which is the same address as the address of the Complainant, except a minor change of the house number from number 21 to number 23. In other words, the Respondent tried to impersonate the Complainant and was well aware of the existence of the Complainant. In combination with the fact that the Respondent contacted the Complainant (either directly or indirectly) to blackmail the Complainant, the Panel can only conclude that the Respondent knew the Complainant and explicitly targeted the Complainant for fraudulent purposes.

Given the fact that the Respondent acquired the disputed domain name by hacking, that the Respondent used the disputed domain name to blackmail the Complainant (or at least allowed the disputed domain name to be used for such purposes), that the Respondent copied the address details of the Complainant (albeit with a slightly different house number), and that there is a total lack of evidence of actual or contemplated good-faith use or of any circumstances refuting the well documented claims of bad faith (the Respondent failed to submit a response), the Panel concludes that the Respondent was aware of the Complainant and its trademark rights at the time of registration and use of the disputed domain name and that the Respondent registered and used the disputed domain in bad faith.

For all the reasons set out above, the Panel concludes that the Complainant did prove that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(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. **Calco.com**: Transferred

PANELLISTS

Name	Bart Van Besien
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DATE OF PANEL DECISION **2024-05-16**

Publish the Decision
