Decision for dispute CAC-UDRP-106638

Case number	CAC-UDRP-106638
Time of filing	2024-06-24 11:27:10
Domain names	jcdecauxairp.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	JCDECAUX SE

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Ivan Tymoshenko

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <jcdecauxairp.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks:

- International trade mark registration no. 803987, registered on 27 November 2001, for the word mark JCDECAUX, in classes 6, 9, 11, 19, 20, 35, 37, 38, 39, 41 and 42 of the Nice Classification; and
- International trade mark registration no. 1152529, registered on 11 October 2012, for the word mark JCDECAUX, in classes 6, 9, 11, 35, 38, 41 and 42 of the Nice Classification.

(Hereinafter referred to as 'the Complainant's trade mark' or 'the Complainant's trade mark JCDECAUX').

The disputed domain name was registered on 19 June 2024. At the time of writing of this decision, it resolves to a parked page featuring pay-per-click (PPC) advertisement for goods and services related to the Complainant’s business segment (for present purposes, 'the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

In 1964, Jean-Claude Decaux invented the new concept and business model of street furniture with bus shelters financed by advertising, thereby laying the foundations to set up the Complainant's business.

The Complainant is the world’s leader in outdoor advertising focussed on three segments of industry: street furniture, transport advertising and billboard. It has a presence in more than 80 countries and in 3,918 cities. In 2023, the Complainant generated a revenue of c. €3.6bn.

In addition to the trade marks mentioned under the above section 'Identification of Rights', and others in its portfolio, the Complainant owns numerous domain names which contain the term 'jcdecaux', most notably: <jcdecaux.com>, which was registered in 1997.

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding. Hence, the Complainant’s factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's submissions can be summarised as follows:

A.1 The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's trade mark JCDECAUX. The additional term 'airp', which can be read as an abbreviation for the word 'airport', is insufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trade mark. The Complainant further submits that the Top Level Domain ('TLD') <.com> does not change the overall impression of affiliation with the Complainant's trade mark.

A.2 The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. The Complainant has not authorised the Respondent to make any use of the Complainant's trade mark, or to apply for registration of the disputed domain name on the Complainant's behalf.

The Complainant further submits that the Respondent is not known by the disputed domain name. In addition, the disputed domain name resolves to a parked page comprising PPC commercial links, and such use is neither bona fide nor legitimate non-commercial or fair use.

A.3 The Respondent registered and is using the disputed domain name in bad faith

A.3.1 Registration

The Complainant submits that the trade mark JCDECAUX was already well-known for decades and protected worldwide at the time of registration of the disputed domain name, including in Ukraine, where the Respondent is located, such that it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark.

A.3.2 Use

The Complainant claims that the disputed domain name is not used for any bona fide offerings in so far as the Respondent's website contains PPC links, and that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of that website (paragraph 4(b)(iv) of the UDRP Policy).

As additional indicia giving rise to a presumption of bad faith, the Complainant refers to the fact that the MX server has been set up for the disputed domain name, a factor which indicates that the latter may be actively used for fraudulent email purposes.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent's Submissions

The Respondent has failed to serve a Response in this UDRP administrative proceeding. Hence, the Complainant's submissions are uncontested.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the grounds which the Complainant must establish to succeed:

i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;

ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

iii. The disputed domain name has been registered and is being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has UDRP-relevant rights in the registered trade mark JCDECAUX since 2001.

The Panel notes that the Complainant's trade mark JCDECAUX is wholly incorporated into the disputed domain name <jcdecauxairp.com>. The adjacent keyboard letters 'airp' have no bearing on the recognisability of the Complainant's trade mark. Moreover, TLDs are typically immaterial to the test under this UDRP Policy ground (see eg WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0'), paragraph 1.11).

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel has furthermore taken stock of paragraph 2.9 of the WIPO Jurisprudential Overview 3.0, according to which UDRP panels have found that the use of a domain name to host a parked page containing PPC links does not represent a bona fide offering where

such links compete with, or capitalise on, the reputation and goodwill of the complainant's trade mark or otherwise mislead Internet users. The Panel notes that this reflects the Respondent's use of the disputed domain name.

The Respondent defaulted in this UDRP administrative proceeding, and has failed to refute the Complainant's prima facie case that it has met its burden under the second UDRP Policy ground.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

The Panel notes a number of factors which point towards a finding of bad faith registration.

First, the Complainant's trade mark JCDECAUX predates the registration of the disputed domain name by over two decades. Moreover, the disputed domain name bears the trade mark JCDECAUX in its string, coupled with keyboard letters which are immaterial to affect the recognisability of the Complainant's trade mark. Hence, the Panel has no hesitation in finding that the Respondent registered the disputed domain name with knowledge of, and intention to target, the Complainant.

As regards the use in bad faith, the Complainant submits that the Respondent may have engaged in the conduct set forth in paragraph 4(b)(iv) of the UDRP Policy:

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

As mentioned in the above section 'Identification of Rights', the disputed domain name resolves to a parked page featuring PPC advertisement for goods and services related to the Complainant's business segment.

The Panel has therefore consulted paragraph 3.1.4 (circumstance (iv) above) of the WIPO Jurisprudential Overview 3.0 to form its view on the use of the disputed domain name under this UDRP Policy ground. In the Panel's assessment, the factors which attach weight to the Complainant's case are as follows: (i) the actual confusion between the Complainant's trade mark JCDECAUX and the disputed domain name; (ii) the Respondent's attempt to cause such confusion, including the setup of MX records; (iii) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; and (iv) the absence of any conceivable good faith use of the disputed domain name, particularly in view of the Respondent's website hosting PPC commercial links related to the Complainant's business area.

Accordingly, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

E. Decision

For the foregoing reasons, in accordance with paragraph 4(a) of the UDRP Policy and Rule 15 of the UDRP Rules, the Panel orders that the disputed domain name <jcdecauxairp.com> be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **jcdecauxairp.com**: Transferred

PANELLISTS

Name	**Gustavo Moser**

DATE OF PANEL DECISION 2024-07-16

Publish the Decision