

Decision for dispute CAC-UDRP-106571

Case number CAC-UDRP-106571

Time of filing 2024-06-12 09:29:13

Domain names thecontinentalus.com

Case administrator

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

Complainant

Organization Continental Reifen Deutschland GmbH

Complainant representative

Organization Göhmann Rechtsanwälte Abogados Advokat Steuerberater Partnerschaft mbB

Respondent

Name Zhenghong Guo

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 is the owner, among others, of the following trademark registrations:

- International figurative mark registration No. 1196449 "Continental" registered on 9 August 2013;
- International figurative mark registration No. 1462355 "Continental" registered on 24 May 2018;
- International figurative mark registration No. 876054 "Continental" registered on 18 July 2005;
- International figurative mark registration No. 455510 "Continental" registered on 1 July 1980;
- International figurative mark registration No. 159256 "Continental" registered on 28 January 1952;
- International figurative mark registration No. 1767662 "Continental" registered on 22 December 2022;
- EUTM figurative mark registration No. 017555731 "Continental" registered on 27 May 2020; and
- EUTM word mark registration No. 017563032 "Continental" registered on 27 May 2020.

The Complainant proved its ownership of the listed trademark registrations by the submitted extracts from the WIPO Madrid and the EUIPO databases.

FACTUAL BACKGROUND

The Complainant "Continental Reifen Deutschland GmbH" is part of the Continental Group (hereinafter "Complainant"). Founded in

1871, the Complainant offers, amongst others, safe, efficient, intelligent and affordable solutions for vehicles, machines, traffic and transportation. The Complainant is one of the world's leading tire manufacturers.

The disputed domain name <thecontinentalus.com> (hereinafter "disputed domain name") was registered on 13 April 2023. According to the Registrar, the Respondent is 'Zhenghong Guo'. The Respondent's provided address is at Honk Kong, China.

PARTIES CONTENTIONS

Complainant:

The Complainant contends that the requirements of the UDRP 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 UDRP).

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).

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).

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

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. Therefore, the Panel proceeds to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them [Paragraph 5(f) of The Rules].

1. CONFUSING SIMILARITY

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter "The WIPO Overview 3.0") in Paragraph 1.2.1 states: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The WIPO Overview 3.0 in Paragraph 1.7 states: "[...] 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 WIPO Overview 3.0 in Paragraph 1.8 states: "Where 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."

In the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., the panel stated that: "It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar".

In the present case, the Complainant has established that owns numerous international trademark registrations and EUTM registrations consisting of the "CONTINENTAL" verbal element, protected for the classes in connection, among others, with vehicles and rubber products (evidenced by the extracts from the WIPO Madrid and the EUIPO databases).

The disputed domain name <thecontinentalus.com> contains the Complainant's trademark in its entirety and adds an article "THE" in front of the Complainant's trademark and the abbreviation "US" behind the Complainant's trademark. No further adjustments were made to distinguish the disputed domain name from the Complainant's trademarks. The abbreviation "US" might stand, among others, for the geographical term "United States". The addition of the gTLD <.com> does not change the overall impression of the disputed domain name either.

Past panels have declared that when the trademark is recognizable within the disputed domain name, the addition of a general (and geographical) term (as "THE" and "US" in the present case) would not prevent a finding of confusing similarity.

Therefore, the disputed domain name is considered to be confusingly similar to the relevant trademark.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

2. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make a case that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant fulfils this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (see CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman). Moreover, past panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the Policy, once the complainant has made something credible (prima facie evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In the CAC Case No. 102279, FileHippo s.r.o. v. whois agent, the panel stated that "[i]n the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under Paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of Paragraph 4(a)(ii) of the Policy."

In the Forum Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group, the panel stated that: "where a response is lacking, WHOIS information can support a finding that the respondent is not commonly known by the disputed domain name".

In the present case, the Complainant claims that the Respondent is not related in any way to the Complainant and that the Complainant has never granted any license nor authorization to the Respondent to use the Complainant's trademarks or apply for registration of the disputed domain name.

The Complainant declared and evidenced its ownership of numerous international trademark registrations and EUTMs (see above). As was already stated, the disputed domain name is confusingly similar to the Complainant's trademarks whose are preceding the date of registration of the disputed domain name. By that, the Respondent is creating a likelihood of confusion and is misleading the consumers.

From the submitted screenshot of the website under the disputed domain name, it becomes clear that the Respondent is using the disputed domain name to offer the Complainant's products. Therefore, the Respondent must have been aware of the Complainant and its trademark at the time of the disputed domain name's registration.

There is no evidence that would lead to the conclusion that the Respondent is known by the disputed domain name.

The Respondent did not reply to the Complaint and so failed to demonstrate his rights or legitimate interests in the disputed domain name.

Under such circumstances, the Panel cannot find any legitimate, non-commercial or fair use rights or interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Complainant has satisfied the requirement under Paragraph 4(a)(ii) of the UDRP.

3. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain name in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.1 states: “If on the other hand circumstances indicate that the respondent’s intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent’s likely knowledge of the complainant’s rights, (ii) the distinctiveness of the complainant’s mark, [...], (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name, [...].”

The WIPO Overview 3.0 in Paragraph 3.1.4 states: “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

In the WIPO Case No. D2006-1440, National Football League v. Thomas Trainer, the panel stated: “when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted.”

In the Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants, the panel stated that: “The Panel finds that Respondent’s lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy ¶¶ 4(c)(i) and (iii).”

In the present case, the Complainant has established that owns numerous international trademark registrations and EUTMs consisting of the “CONTINENTAL” verbal element, protected classes in connection, among others, with vehicles and rubber products with the priority right since 1952 (evidenced by the extracts from the WIPO Madrid and from the EUIPO).

The disputed domain name <thecontinentalus.com> contains the Complainant’s trademark in its entirety and adds an article “THE” in front of the Complainant’s trademark and the abbreviation “US” behind the Complainant’s trademark. No further adjustments were made to distinguish the disputed domain name from the Complainant’s trademarks. The abbreviation “US” might stand, among others, for the geographical term “United States”.

Therefore, the disputed domain name is confusingly similar to highly distinctive and well-known earlier trademarks of the Complainant.

Past panels have decided that the Complainant’s trademarks “CONTINENTAL” are well-known and have obtained a high degree of recognition [cf., e.g., the WIPO Case No. D2016-1449, Continental Reifen Deutschland GmbH of Hannover v. Goldman David, AUTO-SCANNER Ltd.].

A simple Google search for “CONTINENTAL US TIRES/TYRES” leads Internet users mostly to the Complainant’s name and its domain names associated.

Therefore, this Panel states that the Respondent must have been aware of the Complainant’s trademarks and its reputation before the registration of the disputed domain name on 13 April 2023.

As was proved by the submitted screenshot of the website under the disputed domain name, the disputed domain name is leading Internet users to a website offering “CONTINENTAL” products and using “CONTINENTAL” signs and trademarks. By that, the disputed domain name might confuse and attract Internet users to the Respondent’s confusingly similar website for the Respondent’s own commercial gain.

Thus, it might be concluded that the Respondent is not using the disputed domain name in good faith.

The Respondent did not reply to the Complaint and so failed to demonstrate his rights or legitimate interests in the disputed domain name. Moreover, the Respondent did not reply to the cease and desist letter sent to him by the Complainant’s attorneys (evidenced by the submitted Request for transfer of domains and information). Both support the finding of the Respondent’s bad faith.

Following the above-mentioned, the Panel finds that the Complainant has satisfied conditions pursuant to Paragraph 4(a)(iii) of the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **thecontinentalus.com**: Transferred

PANELLISTS

Name Radim Charvát

DATE OF PANEL DECISION 2024-07-30

Publish the Decision
