Decision for dispute CAC-UDRP-106588

Case number	CAC-UDRP-106588
Time of filing	2024-06-17 09:31:31
Domain names	dichvubaohanhsamsung.com, trungtamchinhhangsamsung.com

Case administrator

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

Complainant

Organization	Samsung Electronics Co., Ltd.

Complainant representative

Organization	Coöperatie SNB-REACT U.A.

Respondent

Organization	TNC Viet Nam

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 names.

IDENTIFICATION OF RIGHTS

- The Complainant has provided evidence of ownership of the following trademark:

  Vietnamese trademark SAMSUNG (device) No. 9143 registered on September 16, 1993, and duly renewed;
- Vietnamese trademark SAMSUNG No.283778 registered on June 29, 2017;
- International trademark SAMSUNG No. 1444777 registered on September 17, 2018.

FACTUAL BACKGROUND

The Complainant, established in 1938, is one of the largest electronics companies in the world, present in more than 70 counties. It sells a variety of goods ranging from consumer electronics such as refrigerators, TVs and videos, to electronic gadgets such as cellular phones, computers and printers.

The disputed domain names <dichvubaohanhsamsung.com> and <trungtamchinhhangsamsung.com> were registered respectively on January 11, 2019 and October 10, 2021. Both direct to the same website reproducing the SAMSUNG mark of the Complainant.

PARTIES CONTENTIONS

COMPLAINANT

The disputed domain names are confusingly similar to the Complainant's trademarks SAMSUNG. The Complainant contends that the marks are entirely reproduced in the disputed domain names.

Per the Complaint, the 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 names. The Complainant equally asserts that the use of the domain names in connection to an active website offering real estate services is neither fair, legitimate or non-commercial. On the contrary, the Complainant submits that the disputed domain names are used to disrupt the Complainant's business.

As regards the bad faith of the Respondent, the disputed domain names include the distinctive and well-known trademark SAMSUNG and 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 names 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 names are 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 names (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 names have been registered and are 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

A 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, Samsung Electronics Co., Ltd., is one of the largest electronics companies in the world, present in more than 70 counties. The Complainant has provided evidence of ownership of the mark SAMSUNG.

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".

Both disputed domain names incorporate the SAMSUNG mark entirely. The terms "dichvubaohanh" and "trungtamchinhhang" will be understood as "warranty service" and "official center" respectively per the Complainant, and the Panel was able to verify these meaning. The addition of these generic Vietnamese terms does nothing to diminish the likelihood of confusion, quite to the contrary.

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 names are 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 names:

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

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

(iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain names, 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 names.

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

Equally, the Panel accepts that the Respondent has not made a legitimate non-commercial or fair use of the disputed domain names. It appears clear that the current use of the disputed domain names, in connection with websites impersonating the Complainant and clearly attempting to defraud Internet users of average attention. There is no need, in the opinion of this Panel, to even consider the requirements of the test set in Oki Data.

The Complainant's Representative sent a cease-and-desist letter to the Respondent several months prior to filing the Complaint, leaving more than enough time to the Respondent to assert potential rights, including a distribution agreement – which this Panel does not believe exists at all, given the evidence on the Record and the absence of Response to the Complaint.

Therefore, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names 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 disputed domain name 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.

The SAMSUNG trademark enjoys a long-standing continuous reputation worldwide. Such reputation, coupled with the evidence on record, shows that the Respondent was certainly aware of the existence of the Complainant and of the rights of the Complainant on the trademark. The Panel finds that the Respondent, by registering and using the disputed domain names has intentionally attracted internet users by creating a likelihood of confusion with the Complainant's trademark.

Indeed, the large amount of evidence provided by the Complainant certainly establishes knowledge by the Respondent of the Complainant’s trademarks when at the registration of the domain names, and their current use, in relation to a fake website impersonating the Complainant and reproducing its trademarked logo, leaves no doubt as to the bad faith of the Respondent.

Finally, as indicated above, the Respondent has failed to respond to a cease-and-desist letter sent by the Complainant’s representative, and to the Complaint. The Panel draws the conclusion that the Respondent certainly is not an authorized distributor and acted in bad faith in registering and using the disputed domain names.

The Panel concludes that the Respondent has registered and is using the disputed domain names in bad faith, and therefore finds that the requirements 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. **dichvubaohanhsamsung.com**: Transferred
2. **trungtamchinhhangsamsung.com**: Transferred

PANELLISTS

Name	**Arthur Fouré**

DATE OF PANEL DECISION 2024-08-06

Publish the Decision