Decision for dispute CAC-UDRP-106658

Case number	CAC-UDRP-106658
Time of filing	2024-07-10 08:49:23
Domain names	RubiksCubeAcademy.com

Case administrator

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

Complainant

Organization	Spin Master Toys UK Limited

Complainant representative

Organization	Coöperatie SNB-REACT U.A.

Respondent

Organization	Ivanshigo Group

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 has demonstrated that it owns registered trade mark rights for its RUBIK trade mark including in particular Indian trade mark registration 1833546 for RUBIK registered on June 26, 2009 and Indian trade mark registration 3532192 for RUBIK'S CUBE registered on April 24, 2017.

FACTUAL BACKGROUND

The Rubik’s Cube was created in 1974 by Ernő Rubik, a Hungarian sculptor and professor of architecture, who applied for a patent for the Rubik’s Cube in Hungary on January 30, 1975 branding the product the "Rubik’s Cube" for its commercial launch in 1980. The Rubik’s Cube went from being a teaching medium to becoming a best-selling toy with approximately 500 million units sold in total. The Complainant acquired the RUBIK's CUBE brand (and related intellectual property rights) in 2021.

The disputed domain name was registered on March 15, 2023. Originally it resolved to a website that advertised courses on a paid basis to teach people how to solve a Rubik's cube puzzle using a logo which features a picture of a cube and which features the Complainant's trade mark RUBIK'S CUBE in brightly coloured letters and the word "Academy" in a much smaller black font below it. Since around March 2024 it appears that this website was no longer accessible.

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

The Complainant's registered trade mark RUBIK and also its registered trade mark RUBIK'S CUBE are wholly incorporated into the disputed domain name (although in the case of RUBIK'S CUBE without the apostrophe which cannot be included in a domain name) and the disputed domain name is therefore confusingly similar to either of these registered trade marks. The addition of the common English word "Academy" does not prevent a finding of confusing similarity.

The Complainant has submitted that the Respondent has not acquired (prior) trade mark rights in RUBIK or RUBIKS CUBE and that the Respondent’s use and registration of the disputed domain name was not authorised by the Complainant. It has also submitted that the Complainant has no relationship whatsoever with the Respondent and has never authorised the Respondent to use its trade marks in a domain name and that in the absence of any licence or permission from the Complainant to use its trade mark, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed. The Complainant has also submitted that there is no indication that the Respondent is commonly known by the disputed domain name and that the Respondent cannot establish that it has been commonly known as “Rubik’s Cube Academy” independently of the domain name. The Complainant has also submitted that the Respondent is not making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. It notes that the Respondent's website stated that it is offering courses at "affordable prices" and that the Respondent is therefore offering paid educational services and not a non-commercial service. The Complainant submits overall that the Respondent is attempting to create the impression of association with Complainant to trade off the good will associated with the Complainant and that this is particularly apparent from the manner that the Respondent has used and highlighted the Complainant's trade mark on the website as described under the "Factual Background" section above.

Finally, the Complainant has noted that its representative has sent multiple e-mails to the Respondent’s WHOIS-listed e-mail address, the Gmail e-mail address listed in the header of its website (e.g. on 29 January 2024 and 5 February 2024), and to its registrar/webhost during December 2023 and February 2024 but that the Respondent has not come forward with any response and has not demonstrated any rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. As the Complainant’s case has not been rebutted by the Respondent, the Panel finds for these reasons

that the Complainant has successfully made out its case and that the Complaint also succeeds under section 4(a) ii of the Policy.

The disputed domain name was registered in March 2023, many years after the registration of the Complainant's trade marks. The RUBIK and RUBIK'S CUBE trade marks are extremely well reputed internationally as a consequence of long use in relation to what is reportedly one of the most popular toys ever sold commercially. Also, based on the use of these marks on the Respondent's website and the fact that the Respondent was offering lessons in how to solve the Rubik's Cube puzzle, the Panel agrees with the Complainant that the Respondent must have been aware of the Complainant's RUBIK'S CUBE mark and business when he registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

It is apparent as noted by the Complainant, that the Respondent has formerly used the word mark 'RUBIK'S CUBE' (or "RUBIK")prominently, next to a depiction of the world famous Rubik's Cube product of the Complainant as a prominent logo in the header of its website to which the disputed domain name resolved. The word 'ACADEMY' is in a black and much smaller font on a dark blue background and thus the Complainant's trade marks remained the prominent and eye catching feature of the Respondent's website. Internet users seeing the disputed domain name and being diverted to the Respondent's website could very well have been confused into thinking that there was some association or affiliation with the Complainant's business, or that the website was endorsed by the Complainant, when this was not the case. The Panel notes that there is nothing on the record to suggest that there was any sort of disclaimer on the website which might have helped to mitigate against such confusion. It is also clear that the Respondent was using the disputed domain name to divert to its website from which it was offering a commercial service, namely paid courses in solving the Rubik's Cube puzzle.

Overall, the Panel agrees with the Complainant that the Respondent has targeted the Complainant's very well reputed marks and has used them in the disputed domain name and on the website to which it resolves for its own commercial gain. The fact that the disputed domain name does not now resolve to this website does not change the fact of past use in bad faith by the Respondent and the Respondent has offered no explanation for its conduct. The Panel finds that the requirements of paragraph 4(b)(iv) of the Policy have been met which is evidence of registration and use in bad faith under the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RubiksCubeAcademy.com**: Transferred

PANELLISTS

Name	**Mr Alistair Payne**

DATE OF PANEL DECISION 2024-08-21

Publish the Decision