Decision for dispute CAC-UDRP-106810

Case number	CAC-UDRP-106810
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Domain names	adeccon.com

Case administrator

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

Complainant

Organization	Adecco Group AG

Complainant representative

Organization	Thomsen Trampedach GmbH

Respondent

Organization	Ample Infotech

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 established by evidence that it owns the trademark for ADECCO, Registered Number 1312198, registered on September 30, 2004 by the Government of India ("the ADECCO trademark").

FACTUAL BACKGROUND

The Complainant is a prominent Swiss company engaged in the provision of services for staffing, career development, consulting and related goods and services that operates internationally, including in India where the Respondent is located. It operates in 60 offices and has 1400 employees. The Complainant owns a series of trademarks including the aforesaid trademark for ADECCO and the domain name <adecco.com> which it uses in its business including for its website at https:// www.adecco.com where it promotes its goods and services under the ADECCO trademark. The Respondent registered the domain name **<adeccon.com>** ("the disputed domain name") on May 4, 2023 and has caused it to resolve to the website headed Adeccon Technolab Private Limited. The Complainant is concerned that the Respondent has been using the disputed domain name and the website to which it resolves to suggest falsely that it is affiliated with the Complainant and to offer tailored talent solutions in the recruitment sector and related services which are the same as the services offered by the Complainant.

Accordingly, the Complainant has instituted this proceeding to have the disputed domain name transferred to itself.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS

COMPLAINANT

The disputed domain name is confusingly similar to the ADECCO trademark, as it merely adds the letter “n” after the letter “O” of the trademark. Thus, in registering the disputed domain name, the Respondent has engaged in typosquatting which, as has been demonstrated in many prior UDRP decisions, shows confusing similarity with the ADECCO trademark.

The Respondent has also added the gTLD “.com” which cannot negate a finding of confusing similarity between the disputed domain name and the trademark.

The Respondent has no rights or legitimate interests in the disputed domain name for the following reasons:

- the Respondent is not commonly known by the disputed domain name;
- the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services; and
- the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the ADECCO trademark.

The disputed domain name was registered and is being used in bad faith. That is so for the following reasons:

- the Respondent had actual knowledge of the Complainant and its prior rights in the ADECCO trademark when it registered the disputed domain name;
- the Respondent has caused the disputed domain name to resolve to a website pertaining precisely to the recruitment services sector where the Complainant and its trademark are most well-known and calculated to attract internet users through a likelihood of confusion and for commercial gain; and
- the text of the disputed domain name would lead internet users to assume that the disputed domain name is connected to the Complainant.

As the Complainant will made out all of the elements that it must prove under the Policy, it is entitled to the relief it seeks, namely the transfer of the domain name from the Respondent to the Complainant.

RESPONDENT

The Respondent did not file a formal Response in this proceeding.

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

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This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy ("the Policy" or "UDRP") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy ("the Rules") and the CAC Supplemental Rules.

1. Administrative compliance

On August 29, 2024, the CAC advised the parties of the administrative compliance of the Complaint with the Policy and the Rules and that the Complaint was admitted to proceed further in the Administrative Proceeding.

2. Substantive matters

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In that regard, the Panel also notes that the onus is on the complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(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.

The Panel will therefore deal with each of these requirements in turn.

Identical or Confusingly Similar

The Complainant has adduced evidence that the Panel accepts, that the Complainant is the registered owner of the trademark for ADECCO, Registered Number 1312198, registered on September 30, 2004 by the Government of India ("the ADECCO trademark").

It will be seen therefore that the ADECCO trademark was registered well before the disputed domain name was registered, which was on May 4, 2023. The Registrar has verified that the Respondent is the registrant of the disputed domain name.

The Panel therefore finds that the Complainant "has" a trademark which the Policy requires it to prove and which it has done.

The Panel next finds that the disputed domain name is confusingly similar to the ADECCO trademark for the following reasons.

First, the disputed domain name includes the entirety of the ADECCO trademark, with a minor spelling alteration. Accordingly, it is clear that the disputed domain name has been inspired by and is an attempt to copy the ADECCO trademark. It is also clear and has been held many times in prior UDRP decisions that when internet users see an entire trademark used in a domain name in this way, even with a minor spelling alteration, they naturally conclude that the domain name is an official domain name of the trademark owner or at least that it is being used with the permission of the trademark owner. The Panel finds that internet users would reach that conclusion with respect to the disputed domain name in the present proceeding.

Secondly, the domain name is not a complete duplication of the trademark, but it adds the letter "n" immediately after the letter "O" of the trademark. Thus, in registering the disputed domain name, the Respondent has engaged in typosquatting which, as has been demonstrated in many prior UDRP decisions, shows confusing similarity between the disputed domain name and the trademark.

Thirdly, the fact that the domain name has been created by making such a minor change to the trademark, which is nevertheless apparent for everyone to see, suggests instantly that the Respondent is engaged in some activity designed to generate confusion and to do damage to the Complainant by some means involving use of the disputed domain name. In fact, it can be assumed that the Respondent was hoping that internet users who came across the domain name would not notice that the spelling of the trademark had been slightly changed and would assume that the disputed domain name was an official domain name of the Complainant and that it was being used for a legitimate purpose, neither of which on the evidence is true.

Finally, the "dot.com" suffix which the Respondent has also added, is disregarded for the purpose of assessing confusing similarity, as all domain names must have such an extension and its presence cannot negate the clear impression being given that the disputed domain name is confusingly similar to the ADECCO trademark, which it clearly is.

Taken as a whole, the internet user would look at the disputed domain name and conclude that it is similar to the trademark, because the trademark is included in the domain name and is its dominant portion, and also that it is confusingly similar to the trademark, because it gives rise to a question mark as to whether it really is an official domain name of the Complainant or not.

The Panel therefore finds that the disputed domain name is confusingly similar to the ADECCO trademark and that this conclusion is supported by the prior UDRP decisions cited by the Complainant.

The Complainant has thus made out the first of the three elements that it must establish.

Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you [respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests and that when such a prima facie case is made out, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Panel, after considering all of the evidence in the Complaint, 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.

That prima facie case is made out from the following considerations:

(a) the Complainant has clearly established its rights in the ADECCO trademark;

(b) it is clear from the spelling alteration to the trademark that the Respondent must have devised the domain name with the intention of creating a domain name that would be confusingly similar to the Complainant's famous trademark and in the hope that it would mislead and deceive at least some internet users. Such an intention could not conceivably give rise to a right or legitimate interest in the disputed domain name;

(c) there is no evidence that the Respondent is related in any way to the Complainant's business or affiliated with the Complainant or authorized by it in any way to use the ADECCO trademark or any altered spelling thereof nor any evidence that the Respondent carries out any activity for, or has any business with, the Complainant;

(d) there is no evidence that the Respondent is commonly known by the domain name; the only question here is whether the registrant, which the Registrar makes plain in its Verification, is Pragnesh Patel, at the organization Ample Infotech, is commonly known as "adeccon.com" and there is no evidence that it is so known;

(e) there is no evidence that any licence or permission has been granted by the Complainant to the Respondent to make any use of the trademark or to register the disputed domain name;

(f) the evidence is that the Respondent has caused the disputed domain name to resolve to its website, a screenshot of which is Annex 6 to the Complaint; the Panel has inspected that Annex and notes that:

- it is headed ADECCON Technolab Private Limited;
- the word ADECCON is structured so that the letter "O" in the form of a global image is situated between the second letter "C" and the letter "N" to give the impression that the portion of the word being emphasised is ADECCO which is of course the Complainant's trademark;
- the website makes frequent use of the word "Adeccon";
- the website promotes services in recruiting, staffing, outsourcing and related services which are the same as the services offered by the Complainant including "tailored talent solutions" in recruitment and offshoring; and
- it invites internet users to send a resume to HR@adeccon.com and provides an e-mail address at "info@adeccon.com";

- all of that content uses the ADECCO trademark as its most significant feature, thus invoking the Complainant's trademark.

None of this conduct shows that the Respondent used the disputed domain name for a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy; there was nothing bona fide in such conduct; in fact, in view of the deceptive nature of the Respondent's conduct, the use of the domain name as aforesaid was mala fide rather than bona fide.

Nor did such conduct show that the Respondent made a legitimate non-commercial or fair use of the domain name within the meaning of paragraph 4(c)(iii) of the Policy, as there is nothing legitimate about it, it was in all probability done to make money, which is commercial, and it was not fair to the Complainant or to internet users in general to generate inevitable confusion between the domain name and the Complainant's trademark.

Nor does that conduct come within any of the criteria for a right or legitimate interest in a domain name that are set out in paragraph 4(c)(i) – (iii) of the Policy and nor could it show that the Respondent had a right or legitimate interest in the disputed domain name on any other basis.

These facts give rise to the prima facie case made out by the Complainant.

The Respondent has not filed a formal Response to the claims of the Complainant. The Complainant has given evidence that it sent a cease and desist letter to the Respondent on February 5, 2024 asking it to refrain from further use of the disputed domain name. The Complainant has also given evidence that on February 17, 2024 it received a reply from Jignesh Barot, a director of Adeccon Tecnolab Private Limited stating that "they had acquired the disputed domain name in good faith and that they would not be transferring it to the Complainant or to any other party". It did, however, state that it would be open to displaying a disclaimer on its website disclaiming any and all affiliation with the Complainant. Such a disclaimer has not been placed on the website.

The Panel does not accept that position of the Respondent. In the Panel's view, all of the circumstances make it highly unlikely that the domain name was registered in good faith in view of the marked similarity between the domain name and the ADECCO trademark and the virtual identicality between the contents of the website and the services offered by the Complainant, which has provided its services under the trademark since September 30, 2004, long before the disputed domain name was registered. Moreover, no disclaimer has been added to the website.

Accordingly, the prima facie case has not been rebutted and the Complainant has made out the second of the three elements that it must establish.

Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. The four specified circumstances are:

(i) circumstances indicating that the respondent has registered or 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 respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent 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 respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website 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 the respondent's website or location or of a product or service on the site or location.

The Panel finds for the following reasons, and as the Complainant submits, that the disputed domain name was registered and has been used by the Respondent in bad faith:

- the structure of the disputed domain name as devised by the Respondent makes it clear that it is confusingly similar to the ADECCO trademark and that this was the intention of the Respondent;

- it must be inferred that the Respondent registered and used the disputed domain name with full knowledge of the trademark; clearly the Respondent had that knowledge because it contrived to make the domain name confusingly similar to the ADECCO trademark and made only a minor spelling alteration to the trademark; the misspelling shows that the disputed domain name was intended to be misleading;

- moreover, the Complainant's trademark is famous, including in India where the Respondent is located and it is simply unbelievable that the Respondent could have plucked the domain name out of the air and that by a co-incidence it should be virtually the same as the trademark. Thus, it must be concluded that the Respondent set about misappropriating the Complainant's mark, knowing what it was doing and with the intention of doing harm to the Complainant and probably making money for itself by using it for its own benefit; in any event, the Respondent could have made a simple Google or other search which would have informed it of the status of the ADECCO trademark and its association with the Complainant, but no such search was made;

- the disputed domain name resolves to the Respondent's website which makes prominent use of the name Adeccon which includes the ADECCO trademark and promotes services which are the same as those of the Complainant; in that regard, the Panel again notes the evidence of the way in which the domain name has been used and in particular that the Respondent has

used it to offer services which are the same as those of the Complainant;

- the only inference that can be drawn from the evidence is that the intention of the Respondent must have been to take advantage of the Complainant's good reputation with a view to trading on it by one means or another;
- the conduct of the Respondent leads to the conclusion that in registering the disputed domain name deceptively and without any authority to do so, and using it in the manner described, it must have intended to create a likelihood of confusion, with the intention of attracting internet users who would think that the domain name was an official domain name of the Complainant and that it would lead to an official website of the Complainant. Thus, the matter comes within the provisions of paragraph 4(b)(iv) of the Policy.

All of the facts therefore show that the Respondent registered and used the disputed domain name in bad faith. There is no conceivable ground for concluding that the Respondent was acting in good faith, as the Respondent was clearly targeting the Complainant.

Taken together, these circumstances show that the Respondent has registered and used the disputed domain name in bad faith.

Finally, in addition and having regard to the totality of the evidence, the Panel finds that, in view of Respondent's registration of the disputed domain name, retaining it, and using it as aforesaid, the Respondent registered and used it in bad faith within the generally accepted meaning of that expression.

Accordingly, the Complainant has shown the third of the three elements that it must establish.

On all of the above issues, the Complainant has cited numerous prior UDRP decisions that support its contentions.

The Complainant has therefore made out its case and is entitled to the relief it seeks.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **adeccon.com**: Transferred

PANELLISTS

Name	**Neil Brown**

DATE OF PANEL DECISION 2024-09-23

Publish the Decision