Decision for dispute CAC-UDRP-106769

Case number	CAC-UDRP-106769
Time of filing	2024-08-08 09:19:24
Domain names	dusanvlahovic.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Name	Dusan Vlahovic

Complainant representative

Organization	GriffeShield S.r.l.

Respondent

Name	Xu Zi Qian

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 asserts unregistered trademark rights to his personal name Dusan Vlahović.

The disputed domain name <dusanvlahovic.com> was registered on 14 August 2021.

FACTUAL BACKGROUND

As the Respondent did not file any valid response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

a. The Complainant is a worldwide known football player. He is a Serbian professional footballer who plays as a striker for the Italian Serie A “Club Juventus” and for the Serbia national team. Before joining Juventus in 2022, the Complainant had played for Fiorentina, another Serie A team, since 2017. He has also regularly played for Serbian national team since 2020. He is also active on social networks and engages in sponsorship and other marketing activities related to his career as football player.

b. The disputed domain name was registered on 14 August 2021 and there is no active website under the disputed domain name; there is only a parking page with links.

c. The disputed domain name has been offered for sale by the Respondent on several occasions, in particular on sedo.com for EUR 20,000 and name.com for EUR 5430,63 and opened for bidding at dan.com

PARTIES CONTENTIONS

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

i. The Complainant asserts that the disputed domain name is identical or confusingly similar to his personal name. Although the Complainant does not have registered trademark for this personal name, the Complainant believes that in situations where an unregistered personal name is being used for trade or commerce, the Complainant can establish common law trademark rights in the name. At the time of registration of the disputed domain name, the Complainant was already a famous football player known worldwide and his reputation has only become greater since then. Referring to WIPO cases No. D2000-0210 <juliaroberts.com> and D2022-0036 <emmanuel-macron.com> the Complainant believes that given his reputation as worldwide known football player, similar protection should be awarded to his personal name.

ii. The Complainant has not authorized the Respondent to register his name as domain name or trademark or to make other use of such name in any manner whatsoever. Complainant is not in possession of, nor aware of, the existence of, any evidence tending to demonstrate that the Respondent is commonly known by the disputed domain name, as individual, business name or other organization name. The Respondent has not provided the Complainant with any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services before any notice of the dispute. Therefore, the Respondent does not have any rights or legitimate interests in respect of the disputed domain name.

iii. The disputed domain name is identical to the personal name of the Complainant, a famous professional football player of Juventus Football Club and Serbian national team. The Complainant believes that the Respondent is not in position to claim that it was unaware of the Complainant and his reputation at the time of registration of the disputed domain name. Moreover, the disputed domain name was offered for sale on several occasions for the price as high as EUR 20,000 which clearly exceeds the costs of registration and maintenance of the disputed domain name. Consequently, the Complainant believes that the disputed domain name has been registered and is being used in bad faith.

For these reasons the Complainant believes that it satisfies all requirements under the Uniform Domain Name Dispute Resolution Policy ("**UDRP**" or "**Policy**") for transfer of the disputed domain name to the Complainant.

THE RESPONDENT:

The Respondent did not provide any valid response to the complaint, despite being notified about the complaint in English as well as Chinese language. The Respondent only responded by “go to hell” message after being notified of the complaint.

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).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

(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 now analyse whether the three elements of paragraph 4(a) of the Policy are satisfied in these proceedings.

IDENTITY / CONFUSING SIMILARITY

The disputed domain name is identical to the personal name of the Complainant. Personal names are not explicitly protected by UDRP. However, in the practice of domain name disputes a principle has evolved that personal name may be protected under UDRP as unregistered (common law) trademark in the event that it acquired significant level of distinctiveness in relation to goods or services of the Complainant. As WIPO Jurisprudential Overview 3.0 states:

"UDRP does not explicitly provide standing for personal names which are not registered or otherwise protected as trademarks. In situations, however, where a personal name is being used as a trademark-like identifier in trade or commerce, the complainant may be able to establish unregistered or common law rights in that name for purposes of standing to file a UDRP case where the name in question is used in commerce as a distinctive identifier of the complainant's goods or services. Merely having a famous name (such as a businessperson or cultural leader who has not demonstrated use of their personal name in a trademark/source-identifying sense), or making broad unsupported assertions regarding the use of such name in trade or commerce, would not likely demonstrate unregistered or common law rights for purposes of standing to file a UDRP complaint."

Furthermore, the Panel in WIPO case no. D2013-1255 <philippepierredauman.com> concluded that:

"An actor, author, performer, sports star, politician, or other person whose livelihood turns on personal recognition meets this criterion almost by definition. The interested public buys a book because it's written by Jeanette Winterson, admission to a movie because Julia Roberts or Isabelle Adjani is performing, or a football jersey because it bears Dan Marino's number."

In the light of the above and considering facts and evidence presented by the Complainant the Panel believes it is reasonable to protect the personal name of the Complainant as well-known football player who uses his name not only for the purpose of promoting his football career but also for related marketing and sponsorship activities.

In line with the long-established UDRP practice the Panel also concludes that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel finds that the Complainant satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (please see, for example, WIPO case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd. <croatiaairlines.com>).

As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. No active website is operated under the disputed domain name. The Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in

respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

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

BAD FAITH

The Complainant has shown that the disputed domain name was offered for sale on several occasions by the Respondent, for the price as high as EUR 20,000 exceeding any plausible costs of registration and maintenance of the disputed domain name. This is one of the model examples of the so-called cybersquatting, i.e. bad faith registration and use of a domain name with intent to its subsequent sale to the legitimate holder of the trademark or name to which the domain name is identical or confusingly similar. And such practice also constitutes bad faith in registration and use of the disputed domain name under the Policy (paragraph 4(b) (i) of the Policy).

Therefore, the Panel holds that the disputed domain name has been registered and is being used in bad faith by the Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **dusanvlahovic.com**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2024-09-14

Publish the Decision