Decision for dispute CAC-UDRP-106835

Case number	CAC-UDRP-106835
Time of filing	2024-09-02 14:21:20
Domain names	schneiderelecric.com

Case administrator

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

Complainant

Organization	SCHNEIDER ELECTRIC SE

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	HCL

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:

- the international trademark “SCHNEIDER ELECTRIC” No. 715395 registered on 15 March 1999, registered for classes 6, 9, 11, 36, 37, 39, 42;
- the international trademark “SCHNEIDER S ELECTRIC” No. 715396 registered on 15 March 1999, registered for classes 6, 9, 11, 36, 37, 39, 42;
- the EUTM “SCHNEIDER ELECTRIC” No. 1103803 registered on 12 March 1999, registered for classes 6, 9, 11, 36, 37, 39, 42.

The Complainant proved Its ownership of the listed trademark registrations by the submitted extract from the WIPO database.

FACTUAL BACKGROUND

- The Complainant, which was founded in 1871, is a French industrial business trading internationally. It manufactures and offers products for power management, automation, and related solutions. The Complainant owns several trademarks including the terms “SCHNEIDER ELECTRIC” (see above) and is also the owner of many domain names, which include the trademark “SCHNEIDER ELECTRIC” such as <schneiderelectric.com>, registered since 4 April 1996.

- The disputed domain name <schneiderelecric.com> (hereinafter “disputed domain name”) was registered on 16 August 2024. According to the Registrar, the Respondent is ‘HCL’. The Respondent’s provided address as being at Bengaluru, India.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

RESPONDENT:

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 CAC was contacted by the Respondent who requested more information about the ongoing proceedings. The CAC provided the Respondent with requested information, but the Respondent never filed any contentions regarding the proceeding nor the disputed domain name.

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 1.9 states: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of 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 the EUTM registration consisting of the “SCHNEIDER ELECTRIC” verbal elements, protected for the classes in connection, among others, with providing electric power (evidenced by the extract from the WIPO database).

The disputed domain name <schneiderelecric.com> contains the Complainant’s trademark in its entirety. There is missing the letter “T” in the word “ELECTRIC”. No further adjustments were made to distinguish the disputed domain name from the Complainant’s trademarks.

Past panels have declared that the obvious misspelling of a trademark would not prevent a finding of confusing similarity. The deletion of the letter “T” in the present case is a clear example of an obvious misspelling and of an act of typosquatting.

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

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 fulfills 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 UDRP, 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 asserts that the Respondent is not identified in the Whois database as the disputed domain name.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Complainant claims that neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark or apply for registration of the disputed domain name by the Complainant.

The Complainant adds that the disputed domain name resolves to a parking page with commercial links.

The Complainant declared and evidenced Its ownership of numerous international trademark registrations and EUTM (see above). As was already stated, the disputed domain name is confusingly similar to the Complainant’s trademarks. By that, the Respondent is creating a likelihood of confusion and misleading the consumers. Since there is an obvious misspelling of the Complainant’s trademarks in the disputed domain name, the typosquatting constitutes further proof that the Respondent has no rights or legitimate interests in the disputed domain name.

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 provide commercial links for the Respondent’s own commercial gain.

There is no evidence that would lead to the conclusion that the Respondent is known by the disputed domain name. Identification of the Respondent is missing in the WHOIS information (proved by the WHOIS information of 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 877979, Microsoft Corporation v. Domain Registration Philippines, the panel stated: “In addition, Respondent’s misspelling of Complainant’s MICROSOFT mark in the <microssoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy ¶ 4(a)(iii).”

In the WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC, panel stated: “In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.”

In the CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono, the panel stated: “There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”

In the present case, the Complainant has established that owns numerous international trademark registrations and EUTM consisting of the “SCHNEIDER ELECTRIC” verbal elements, protected for classes in connection, among others, providing electric power, with the priority right since 1999 (evidenced by the extract from the WIPO database).

The disputed domain name <schneiderelecric.com> contains the Complainant’s trademark in its entirety. There is missing the letter “T” in the word “ELECTRIC”. No further adjustments were made to distinguish the disputed domain name from the Complainant’s trademarks. It is an example of an obvious misspelling which creates the act of typosquatting. Typosquatting indicates bad faith registration and use of the disputed domain name.

Past panels have declared that the Complainant’s trademarks are well-known (see, e.g., WIPO Case No. D2020-1403, Schneider Electric S.A. v. Whois Privacy Protection Foundation / Sales department). Therefore, the disputed domain name is confusingly similar to highly distinctive and well-known earlier trademarks of the Complainant. 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 16 August 2024.

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 parking website providing commercial links to other websites. 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.

Moreover, the disputed domain name has been set up with MX records (evidenced by the DNS query). Such a finding leads to the conclusion that the disputed domain name might be actively used for e-mail purposes. This Panel assumes that such use of the disputed domain name cannot be understood as a good faith use of 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.

Thus, it might be concluded that the Respondent is not using the disputed domain name in good 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. **schneiderelecric.com**: Transferred

PANELLISTS

Name	**Radim Charvát**

DATE OF PANEL DECISION 2024-10-03

Publish the Decision