Decision for dispute CAC-UDRP-106849

Case number	CAC-UDRP-106849
Time of filing	2024-09-19 09:26:58
Domain names	customwriting.company

Case administrator

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

Complainant

Organization	Writera Limited

Respondent

Name	Mihail Vasilev

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 bases its Complaint on the US trademark “CUSTOMWRITINGS.COM”, No. 5749163, registered on 14 May, 2019, for services in class 41.

FACTUAL BACKGROUND

The Complainant, a company from Cyprus, owns the US trademark “CUSTOMWRITINGS.COM”, No. 5749163, mentioned above, following an assignment agreement concluded with the previous owner of the mark, One Freelance Limited.

The Complainant operates the domain name <customwritings.com>, registered since 10 October, 2005.

Prior to the registration, the mark has been used by the Complainant as a trade name since 2006 for academic writing assistance and associated education services.

The disputed domain name <customwriting.company> was registered on 15 April, 2024 and resolved at the time when the Complaint was filed to an active website.

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.

The Complainant's contentions are the following:

The disputed domain name <customwriting.company> is confusingly similar to the Complainant's earlier trademark CUSTOMWRITINGS.COM, that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of

reasons and that the disputed domain name was registered and is being used in bad faith.

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

I. Confusing Similarity

The Panel agrees that the disputed domain name <customwriting.company> is confusingly similar to the Complainant's earlier CUSTOMWRITINGS.COM trademark. The disputed domain name incorporates the verbal part CUSTOMWRITINGS from the Complainant’s earlier CUSTOMWRITINGS.COM trademark in its entirety with the omission of the letter “s” from the verbal element “WRITINGS”, while the last verbal element from the Complainant’s trademark “.COM” and the dot in front of it, part which corresponds in fact to a generic Top Level Domain (“gTLD”), is lacking from the disputed domain name, being replaced by another gTLD, namely .company. This is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant’s trademark and it does not change the overall impression of the designation as being another version of the Complainant’s trademark.

Moreover, the extension “.company” is not to be taken into consideration when examining the similarity between the Complainant’s trademarks and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a generic Top Level Domain (“gTLD”) such as “.company” is irrelevant as it is well established that the gTLD is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, L’Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

II. Lack of Respondent's rights or legitimate interests

The Complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name as such is not identified in the WHOIS database as the disputed domain name.

Based on the available evidence, the Respondent is not related in any way to the Complainant, nor has any business relationship with the Complainant.

At the time when the Complaint was filed, the disputed domain name resolved to an active website which was offering the same type of services as the Complainant, having mentioned an identical denomination as on the Complainant's website, namely "CustomWritings", which only increases the similarity between the disputed domain name and the Complainant's earlier trademark.

Such use does not amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name.

The Panel notes that the Respondent had an opportunity to comment on the Complaint's allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

III. Bad Faith

The Complainant's CUSTOMWRITINGS.COM trademark predate the registration of the disputed domain name and Respondent has never been authorized by Complainant to register the disputed domain name. Therefore, the Panel concludes that at the time of registration of the disputed domain name, the Respondent was well aware of the Complainant's CUSTOMWRITINGS.COM trademark.

In the present case, the following factors should be considered:

(i) the Respondent registered the disputed domain name containing the verbal part CUSTOMWRITINGS from the Complainant's earlier CUSTOMWRITINGS.COM trademark in its entirety with the omission of the letter "s" from the verbal element "WRITINGS", while the element .com which corresponds to a gTLD was lacking, being added another gTLD, namely .company;

(ii) at the time when the Complaint was filed, the disputed domain name resolved to a website which was offering the same type of services as the Complainant, having mentioned an identical denomination as on the Complainant's website, namely "CustomWritings", which may lead the users to confusion as to the source of these services;

(iii) the Respondent did not respond to the cease and desist letter sent by the Complainant;

(iv) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under 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. **customwriting.company**: Transferred

PANELLISTS

Name	**Delia-Mihaela Belciu**

DATE OF PANEL DECISION 2024-10-25

Publish the Decision