Decision for dispute CAC-UDRP-106913

Case number	CAC-UDRP-106913
Time of filing	2024-10-02 13:05:51
Domain names	diigitec.com

Case administrator

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

Complainant

Organization	DIGITEC GALAXUS AG

Complainant representative

Organization	SILKA AB

Respondent

Organization	My Store

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

According to the evidence submitted by Complainant, Complainant is the owner of Swiss Trademark Registration nº P-486055 DIGITEC (word mark), registered on June 20, 2001.

FACTUAL BACKGROUND

According to the information provided the disputed domain name <digiitec.com> was registered on 22 August 2024.

According to the information provided by Complainant the disputed domain name currently does not resolve to an active website. In addition, MX records have been set up.

PARTIES CONTENTIONS

Complainant:

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

According to the evidence submitted by Complainant, Complainant is a Swiss online retailer company founded in 2001. Complainant operates two online shops: “www.digitec.ch” and “www.galaxus.ch”; “www.digitec.ch” is Switzerland's online market leader in the fields of IT, consumer electronics and telecommunication.

Complainant submits that the disputed domain name is confusingly similar to Complainant's trademark. According to Complainant this is a typical typosquatting case, since it reproduces Complainant’s DIGITEC mark in its entirety but with a minor alteration of letters, which does not change the overall impression that Complainant’s trademark is sufficiently recognizable within the disputed domain name as only the letter “i” has been added to the DIGITEC trademark.

According to Complainant, Respondent has no rights or legitimate interest in the disputed domain name. Respondent is not a licensee of Complainant, and it has not received any consent, permission, authorization or acquiescence from Complainant to use its DIGITEC mark in association with the registration of the disputed domain name. Complainant submits that Respondent has not used the disputed domain name in good faith or for a non-commercial activity. The disputed domain name currently does not resolve to an active website. However, the disputed domain name previously resolved to a website with a similar look-and-feel to Complainant’s website, which also displayed Complainant’s DIGITEC mark and logo in a prominent manner, allegedly offering for sale the same type of products that Complainant offers through its website, with much lower prices than those usually found in this type of products (in fact they are more than 90% off their normal price). Moreover, the website included a “contact us” form, in which a name, an e-mail and a telephone number were requested. In Complainant’s view, this Respondent’s use of the disputed domain name clearly causes confusion for customers, misleading them into thinking that Respondent’s website is operated by or associated with Complainant, when it is not the case. Moreover, for this reason, this “contact us” form in the website may also constitute a phishing scheme aimed to mislead internet users into providing confidential information. Therefore, this deceptive, confusing and unlawful use of the disputed domain name cannot in any way amount to a bona fide offering of goods or services.

According to Complainant the disputed domain name is registered and is being used in bad faith. The disputed domain name constitutes a simple typosquatting variant of Complainant’s DIGITEC mark, which seems to be registered to attract Internet users by misleading them into believing that the website at the disputed domain name is authorized by or somehow connected to Complainant.

The disputed domain name does not currently resolve to an active website. However, the non-use of a disputed domain name would not prevent a finding of bad faith under the doctrine of passive holding. Complainant asserts that Respondent has used the disputed domain name in the past in an effort to impersonate Complainant, or otherwise mislead Internet users as to the source of Respondent’s website, which amounts to bad faith. Finally, MX servers are configured in the disputed domain name, which indicates a risk that Respondent potentially uses the disputed domain name to create an e-mail address, with the suffix “@diigitec.com” for deceiving purposes.

Respondent:
No administratively compliant Response has been filed.

RIGHTS

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 Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown 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

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

In the opinion of the Panel the disputed domain name is confusingly similar to Complainant's trademark. Many UDRP decisions have found that a disputed domain name is identical or confusingly similar to a complainant's trademark where the relevant trademark is recognizable within the disputed domain name. Complainant has established that it is the owner of a trademark registration for DIGITEC. The disputed domain name incorporates the entirety of the well-known DIGITEC trademark as its distinctive element. The addition of the letter "i" in the disputed domain name, is insufficient to avoid a finding of confusing similarity as the DIGITEC trademark remains the dominant component of the disputed domain name. The Top-Level Domain ("gTLD") ".com" in the disputed domain name may be disregarded.

The Panel notes that Complainant's registration of its trademark predates the creation date of the disputed domain name.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use its trademark or to register the disputed domain name incorporating its mark. Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark of Complainant. Respondent is not commonly known by the disputed domain name nor has it acquired trademark rights. Complainant has no relationship with Respondent. In the view of the Panel this case is a typical case of "typosquatting" which does not confer any rights nor interest in the disputed domain name. In addition, the current non-use of the disputed domain name does represent a bona offering of goods or services. The Panel also takes into account that according to the undisputed evidence submitted by Complainant, the disputed domain name previously resolved to a website imitating Complainant's website which cannot be considered a bona fide offering of goods and services.
Respondent did not submit any response.
Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith. Complainant has rights in the DIGITEC trademark. Respondent knew or should have known that the disputed domain name included Complainant's well-known mark. The Panel notes that the disputed domain name has been registered and is being used for "typosquatting" purposes.
The Panel also notes the undisputed submission of Complainant that the disputed domain name currently does not resolve to an active website. It is well established that non-use of a domain name does not prevent a finding of bad faith use under the doctrine of passive holding (see section 3.3. of the WIPO Overview 3.0). The undisputed submission that there are several active MX records connected to the disputed domain name, suggests that it is unlikely that Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.
The Panel finally notes that the disputed domain name incorporates a typosquattting version of Complainant's well-known trademark in its entirety, which indicates, in the circumstances of this case, that Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, which constitutes registration and use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **diigitec.com**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2024-11-04

Publish the Decision