

Decision for dispute CAC-UDRP-106334

Case number CAC-UDRP-106334

Time of filing 2024-09-30 08:38:34

Domain names 3clicks.net

Case administrator

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

Complainant

Organization 3Clics SPA

Respondent

Name EROL BASAR

Respondent representative

Organization Archer Softech

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <3clicks.net> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon a number of pending and registered trade marks in Chile, Mexico and Peru, including:

- Chilean trade mark registration no. 1344335, filed on 22 December 2020, for the word mark 3CLICS, in class 9 of the Nice Classification.

(Referred to as 'the Complainant's trade mark').

The disputed domain name <3clicks.net> was registered on 6 September 2021.

At the time of writing this decision, the disputed domain name resolves to a parking page hosted by GoDaddy, a publicly traded Internet domain business, with the headed message 'this domain is available for sale' (for present purposes, 'the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

The Complainant, 3CLICS SpA, was incorporated in 2020 under the laws of the Republic of Chile. The Complainant's purpose is "to market all kinds of products and services related to various software programmes and products". For that purpose, the Complainant registered the domain name <3clics.cl> in 2020.

Owing to commercial expansions into Latin American countries, the Complainant has also registered numerous domain names bearing the sign '3clics', most notably: 1) <3clics.mx>, registered in 2020; and 2) <3clics.lat>, registered in 2021.

B. Respondent's Factual Allegations

The Respondent served a Response in this UDRP administrative proceeding on 25 October 2024, the contents of which are laid down in the below section 'Parties' Contentions'.

The Respondent is a domain name investor from Turkey.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's contentions can be summarised as follows:

A.1 The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant submits that the disputed domain name owned by the Respondent is identical or confusingly similar to the trade mark 3CLICS which is owned by the Complainant. The Complainant argues that the addition of the ".net" suffix is "not enough to distinguish the two names". Moreover, the Complainant contends that the disputed domain name is "identical to the Complainant's trademark 3CLICS in all but one character".

In addition, the Complainant alleges that the disputed domain name is confusingly similar to the Complainant's company name 3CLICS SpA as well as the Complainant's own domain names which contain the element "3clics" in the domain name string. In this connection, the Complainant argues that all of the Complainant's domain names include the Complainant's trade mark 3CLICS and a country code or other geographic identifier.

A.2 The Respondent has no rights or legitimate interests in respect of the disputed domain name

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

- The Respondent registered the disputed domain name with the sole purpose of reselling it. The Respondent has not used the domain name in connection with any bona fide offering of goods or services; and
- The Respondent is not commonly known by the disputed domain name. The Respondent has only registered the domain name and has not used it in any way that would make it known to the public.

A.3 The Respondent registered and is using the disputed domain name in bad faith

The Complainant alleges that the Respondent registered or acquired the disputed 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 trade mark, or to a competitor of the Complainant for valuable consideration in excess of the Complainant's documented out-of-pocket costs.

The Complainant indicates that the evidence shows that the Respondent registered the disputed domain name with the "sole purpose of reselling it for a profit". The Complainant argues that this is evident by the "lack of legitimate use associated with the domain name. There are no demonstrable preparations to offer goods or services, nor is there any evidence the Respondent is commonly known by the disputed domain name".

The Complainant argues that the Respondent's actions "showcase a pattern of domain name speculation". The Complainant further contends that the Respondent registered the disputed domain name with the hopes of profiting from the established brand recognition" of the Complainant, and that the Respondent's behaviour is "explicitly identified in the UDRP as abusive and serves no legitimate purpose other than the unfairly capitalise on the Complainant's goodwill".

The Complainant also alleges the following:

- The Respondent's registration of the disputed domain name was "no coincidence". The Respondent is a domain name spectator who has registered a large number of domain names that are similar to well-known trade marks. The Complainant notes that "inside the domain marketplace Dan.com", the user account that has listed the disputed domain name also owns over 1600 other domain names, and there is no regard as to the domain name's "status as a well-known or registered trademark". Examples given by the Complainant include <evian.net> and <tvcom.net>. The Complainant argues that it is "obvious" that the Respondent "runs a business based on extorting high fees from trademark owners, under the assumption

they would rather pay than go through this arbitration process"; and

- The Respondent's actions have caused and are likely to continue to cause confusion among consumers. This is increased by the Respondent's typosquatting and misspelling activities, which is also further evidence of the Respondent's bad faith intent.

A.4 Remedies Requested

- Transfer of the disputed domain name to the Complainant; and
- Payment of costs from the Respondent.

B. Respondent's Submissions

The Respondent served a Response in this UDRP administrative proceeding on 25 October 2024.

The Respondent's contentions can be summarised as follows:

B.1 Preliminary Matter – Language of the Proceeding Request

The Respondent notes that the majority of the Complainant's annexures (12 out of 14) are not in English (the language of the proceedings, given the Registration Agreement is in English). The Respondent therefore requests that "the Annexes in a language other than in English be disregarded".

B.2 The disputed domain name is neither identical nor confusingly similar to a protected trade mark

The Respondent's contentions under this UDRP Policy ground can be summarised as follows:

- The Complainant has provided evidence of its trade mark rights in a language which is not the language of this UDRP administrative proceeding. Hence the Respondent requests that the Panel should "disregard" the documents presented; and
- In any event, the Complainant must also prevail under the remaining two elements of the UDRP.

B.3 The Respondent has rights or legitimate interests in the disputed domain name

B.4 The disputed domain name has not been registered and used in bad faith

The Respondent's contentions under these two UDRP Policy grounds are intertwined and can be summarised as follows:

- The Panel must find that the Respondent has a "total lack of any right or legitimate interest", not merely that the Complainant has a "better" right or legitimate interest;
- The Respondent registered the disputed domain name because it comprised a highly common combination "3clicks" based on the "3 click rule". The Respondent contends that this is an "unofficial web design rule concerning the design of website navigation. It suggests that a user of a website should be able to find any information with no more than three mouse clicks";
- The Respondent is a domain name investor from Turkey and has put the disputed domain name up for sale because the decisions of impartial panels have found in favour of such a business strategy. The Respondent registered the disputed domain name for its value as a combination of the common term "3-clicks", particularly as it has multiple possible interpretations, without targeting the Complainant. The Respondent further argues that the business of "domain name investment" gives rise to rights or legitimate interests in the domain name. The Respondent argues that investing in common word domain names is a perfectly legitimate business and can qualify as a bona fide offering of goods and services so as long as the respondent did not target a specific complainant or protected mark;
- The Respondent notes that the Complainant does not have any presence in the Respondent's territory or its neighbouring nations. A Google search from Turkey does not show any results for the Complainant in the top 30 search results, and numerous third parties make use of the combination of "3clicks". A search of the "3clicks or 3clics" on the local trade mark database also does not provide search results for any similar trade mark on record. The Respondent also notes that the Complainant did not assert in the Complaint that it extended its operations to any countries beyond Chile and Mexico, although it does note that the Complainant has registered <3clics.lat> to encompass the whole of the Latin America region;
- The Respondent also owns a number of similar types of domain names, including <4links.net>;
 - The Respondent registered the disputed domain name without any knowledge of the Complainant or its trade mark in September 2021, and never used the disputed domain name to target the Complainant in any manner. The Respondent notes that the Complainant registered <3clics.net> in December 2023. The Respondent also argues that it "never once solicited the Complainant or to otherwise targeted its trademark since its registration [of the disputed domain name] in September 2021";
 - The Respondent notes that other entities use "3clicks" in their domain names, and there are companies registered globally with the name "3clicks";
 - The Respondent notes that domain name registration is generally on a first come first serve system, so the first person to register a domain name would normally be entitled to use the domain name for any legitimate purpose it wishes. The

Respondent notes that the Complainant does not have rights in "3Clicks";

- The Respondent argues that in cases where a "commercial brand contains a common word element, as it is currently, even minor differences between a brand and a domain name – even just a single letter – are sufficient to eliminate any confusing similarity";
 - In response to the Complaint, where the Complainant gives examples of the Respondent's registration of well-known trade marks in a domain name, the Respondent argues that 'evian' is a first name for boys of Hebrew origin and 'tvcom' is a combination of TV and the word com, and can mean Television Company or simply TV.com;
 - In response to the Complaint, where the Complainant argues that the Respondent registered the disputed domain name with the sole purpose of reselling it, the Respondent submits that this is "what gives the Respondent legitimate rights in the disputed domain name". The Respondent has acquired the disputed domain name as a professional domainer and the disputed domain name is "stock in trade";
 - In response to the Complainant's contention that the Whols privacy shield is evidence of a lack of legitimate interest and bad faith, the Respondent notes that "it is widely held that there are different reasons for which a domain registrant may deploy a Whols protection service" and cites decisions where the panels have held that "there are any number of plausible reasons a registrant may choose to use a privacy service that does not involve bad faith"; and
 - In response to the Complaint, where the Complainant argues that the Respondent is not using the disputed domain name with any bona fide offering of goods and services, the Respondent cites case law whereby panels have held that such an allegation is an "extraordinary statement. It incorrectly assumes that non-use of a domain name itself prevents the registrant from acquiring a right or legitimate interest and registration of a domain name for no reason other than to sell it necessarily deprives the registrant of a right or legitimate interest".

The Respondent also notes that:

- It did not ever solicit the Complainant;
- It did not ever use the disputed domain name to interfere with the Complainant; and
- It did not use the disputed domain name in a way which prejudiced or harmed the Complainant; and
- It did not use the disputed domain name in a way which could genuinely be considered bad faith use.

B.5 Reverse Domain Name Hijacking

The Respondent seeks a finding for reverse domain name hijacking ('the RDNH counterclaim') against the Complainant, for the following reasons:

- The Complainant has had "legal assistance" in the preparation of the Complaint;
- The Complaint has references to the UDRP and CAC Supplemental rules, so the Complainant was aware of the requirements it must fulfil, but it chose to file the Complaint in any event knowing it would not be successful;
- The Complainant has initiated proceedings, which has meant that parties have incurred costs for a case which it could not have credibly succeeded.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has failed to make a prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name (within the meaning of paragraph 4(a)(ii) of the UDRP Policy).

BAD FAITH

The Complainant has failed to show that 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 Policy).

PROCEDURAL FACTORS

1. Language of the Proceeding

The Panel is given discretion under Rule 11 of the UDRP Rules to determine the appropriate language of the UDRP administrative proceeding. The Panel notes Rule 10 of the UDRP Rules, which vests the Panel with authority to conduct the proceedings in a manner it deems appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

According to the registrar's verification response the language of the registration agreement for the disputed domain name <3clicks.net> is English.

The Respondent has requested that the Panel disregard the Complainant's majority of annexes to the Complaint as they were provided in Spanish language only.

The Panel sympathises with the Respondent's request, but finds that (in line with the *Writera* test developed in CAC Case no. 104144, *Writera Limited v. alexander ershov*) the Panel has a duty to consider who would suffer the greatest inconvenience as a result of such a request. The balance of convenience, in this case, would unfavour the Complainant unduly, not least given that the Panel has performed trade mark search in the relevant databases to ascertain the Complainant's trade mark rights, and was able to understand the nature of the relevant annexes.

In view of the above, the Panel has decided to accept the Complainant's annexes as filed, such that the Respondent's request is denied.

2. Panel's directions

Content with the documentation provided, the Panel will proceed to a decision on the merits of this UDRP administrative proceeding.

3. Miscellaneous

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

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the grounds which the Complainant must establish to succeed:

- i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- 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.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP administrative proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The test under the first UDRP Policy ground provides for a juxtaposing approach, according to which the disputed domain name and the Complainant's trade mark are to be compared side by side, in a relative straightforward exercise.

In order to succeed, the Complainant must provide evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain name is identical or confusingly similar to the Complainant's trade mark.

The Panel is satisfied that the Complainant owns trade mark rights in '3CLICS' since 2020. The evidence supporting those rights is compelling and firmly established.

The disputed domain name is <3clicks.net> and it consists of the term '3clicks' in addition to the generic Top-Level domain ("the gTLD") <.net>.

A straightforward comparison between the Complainant's trade mark and the disputed domain name reveals similar characteristics; both display an overwhelming resemblance: '3clics' versus '3clicks'. Furthermore, gTLDs (in this case, <.net>) are typically disregarded by UDRP panels under this UDRP Policy ground given that the gTLD is part of the domain name's anatomy.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The second UDRP Policy ground provides that the Respondent shall demonstrate that it has rights or legitimate interests in the disputed domain name. It falls on the Complainant the burden to refute any such showing.

Paragraph 4(c) of the UDRP Policy sets out a non-exhaustive list of examples by which the Respondent can demonstrate its rights or legitimate interests in the disputed domain name, as follows:

- (i) before any notice of this UDRP administrative proceeding, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name, even if the Respondent has acquired no trade mark or service mark rights; or
- (iii) the Respondent is 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 trade mark or service mark at issue.

The evidentiary standard under the UDRP proceedings is such that, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to provide evidence to the contrary.

The Respondent has served a Response in this UDRP administrative proceeding and the case record demonstrates that the Respondent is in the business of being a "domain name investor".

A material aspect of the test under this UDRP Policy ground, in the present matter, pertains to whether the Respondent's activities qualify as bona fide.

The evidence presented confirms that the Respondent actively engages in the registration and resale of domain names composed of generic terms – a practice that is recognised and can be accepted within the domain industry (see WIPO Case No. D2017-1961, *Virgin Enterprises Limited v. Domain Admin/This Domain is for Sale, Hudedomains.com*, where the Panel stated "...The Respondent is a domainer which regularly registers domain names that include generic words for the purposes of selling them. Such business activities can be legitimate and are not in themselves a breach of the Policy, so long as they do not encroach on third parties' trade mark rights. In this case, no evidence has been provided to establish that the Respondent has engaged in registering domain names that take advantage of the Complainant's or third parties' trade mark rights. The Respondent simply chooses to register generic words as domain names"). See also WIPO Case No. D2021-2472, *SkyCell AG v. Withheld for Privacy Purposes*, Privacy service provided by Withheld for Privacy ehf / Joubin Safai.

The Respondent has showcased a business model that appears to adhere to established industry practices, and there is no indication that its actions encroach upon the Complainant's trade marks or rights, from what the Panel can discern in the case record. In particular, the Panel notes from the case record that the Complainant does not appear to have any operations or is in any way known in the Respondent's territory. The Complainant's trade mark registrations are of limited geographical scope and the Complainant provides no evidence of the reputation and public profile of that trade mark, nor any grounds on which to conclude that the Respondent was, or ought to have been, aware of the Complainant's trade mark when it registered the disputed domain name.

In addition, the case record does not appear to show that the Respondent was aware of the Complainant's trade mark when it registered the disputed domain name, and did so in order to take unfair advantage of the commercial goodwill attaching to that trade mark, in other words, "targeting" the Complainant's trade mark rights.

The '3 clicks' element of the disputed domain name string, from what can be discerned in the case record, is not unique to the Complainant, and that name is in legitimate use by other parties both in the course of trade – though this would not necessarily assist the Respondent if it were targeting any of those brand owners.

The Respondent, for its part, explains its rationale for its purchase and its offer to sell the domain name, comprising matters unrelated to the Complainant's trade mark.

The Panel therefore finds that the Complainant has failed to make a prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

In the light of its conclusions under the second element of the Policy, as above, the Panel does not consider it necessary or appropriate to reach a determination under the third element in this case.

E. Abuse of the UDRP administrative proceeding

In the Response, the Respondent asserts an RDNH counterclaim.

Paragraph 1 of the UDRP Rules defines RDNH as 'using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name'. Paragraph 15(e) of the UDRP Rules provides, in its relevant part, as follows: "[...] If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

Paragraph 4.16 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ('the WIPO Jurisprudential Overview 3.0') provides further guidance as to the circumstances under which panels would make a finding of RDNH:

"[...] (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant's lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith (see generally section 3.8) such as registration of the disputed domain name well before the complainant acquired trademark rights, (ii) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database, (iii) unreasonably ignoring established Policy precedent notably as captured in this WIPO Overview – except in limited circumstances which prima facie justify advancing an alternative legal argument, (iv) the provision of false evidence, or otherwise attempting to mislead the panel, (v) the provision of intentionally incomplete material evidence – often clarified by the respondent, (vi) the complainant's failure to disclose that a case is a UDRP refiling, (vii) filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis, (viii) basing a complaint on only the barest of allegations without any supporting evidence".

In evaluating the RDNH counterclaim, the Panel must consider whether there has been an abuse of the UDRP administrative proceeding in filing the Complaint. Panels have found in favour of respondents in cases where complaints are deemed unmeritorious, lacking any reasonable prospect of success, or when they are frivolous in nature. However, this is not applicable to the present case. The Complainant has articulated concerns that reflect a legitimate basis; yet, it is clear that there has been a failure to fully consider the nature of the Respondent's business as a bona fide trader of generic domains. While the Panel finds no evidence of abuse of the process in the filing of the Complaint, it emphasises the importance of recognising the Respondent's legitimate activities within the domain space.

Even though the Panel finds no evidence of abuse of the UDRP administrative proceeding in this instance, it is essential for the Complainant to exercise due diligence in any future complaints. A careful consideration of the Respondent's legitimate business activities and strict adherence to the applicable UDRP framework will contribute to a better understanding of the rules and remedies available in the domain space for all parties involved.

The Panel therefore denies the RDNH counterclaim.

F. Decision

For the foregoing reasons, the Complaint is denied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **3clicks.net**: Remaining with the Respondent

PANELLISTS

Name	Yana Zhou
------	-----------

DATE OF PANEL DECISION 2024-11-22

Publish the Decision
