

Decision for dispute CAC-UDRP-107041

Case number	CAC-UDRP-107041
Time of filing	2024-11-08 09:16:49
Domain names	epta-agencies.com

Case administrator

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

Organization	European Union Intellectual Property Office (EUIPO)
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Complainant representative

Organization	Schönherr Rechtsanwälte GmbH, organizační složka
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Respondent

Name	Henry Travis
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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 has established by evidence that it owns the following trademarks:

- the international trademark for EUIPO, registered number 1751909, registered on August 17, 2023;
- the international trademark for EUIPO, registered number 018839087, registered on July 27, 2023;
- the international trademark for EUIPO EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE, registered number 1753711, registered on August 17, 2023; and
- the international trademark for EUIPO EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE, registered number 018839135, registered on July 27, 2023

(collectively "the EUIPO trademarks").

FACTUAL BACKGROUND

The European Union Intellectual Property Office ("EUIPO" and "the Complainant") is a recognised agency of the European Union and its sole official agency responsible for the registration and administration of various kinds of intellectual property rights, including trademarks. It is the registered owner of the aforesaid EUIPO trademarks. The Complainant has continuously used the EUIPO trademarks since their registration to designate the services it provides under the trademarks. On September 10, 2022, the

Respondent registered the domain name <epta-agencies.com> ("the disputed domain name") and caused it to resolve to a website. That website promotes itself as being the European Patent and Trademark Agency ("the EPTA") and in what is tendered as a screenshot states: "We provide a client access to our Patents and Trademarks data base for comfortable searching and gaining information" and that it provides "patent watch services", "trademark watch services", "database administration" and "examination activity". The Respondent has, according to the Complainant, also been using the disputed domain name and its website to send out purported invoices from "EPTA European Patent and Trademark Agency" for the "Registration of Your Community Trade Mark", but which also include the expression "Data publication from EUIPO-European Union Intellectual Property Office", "Registration and Reproduction of Your Community Trademark" (twice) and the expression "Registration Community Trademark Application Offer". The purported invoices require payment of a specified fee and give details of a bank account into which payment is to be made to the benefit of "EPTA-Agency." The Complainant is concerned that the registration of the disputed domain name, its use in the resolving website and in the purported invoices, are calculated to give the false impression that the EPTA is an official agency for the processing of EU trademarks, to pass itself off as the Complainant and to obtain payment for the illegitimate services allegedly offered by the Respondent.

Accordingly, the Complainant has instituted this proceeding and requests "Revocation" (*sic*) of the disputed domain name.

PARTIES CONTENTIONS

A. COMPLAINANT

1. The Complainant is the sole official European Union agency with responsibility for intellectual property rights and it has been performing that function for some 30 years.
2. The Complainant provides its services in that respect pursuant to well-known unregistered trademarks incorporating the letters EU indicating the European Union and the letters IPO indicating Intellectual Property Office.
3. The EUIPO trademarks are also trade names of the Complainant as they are signs used in the course of trade according to Article 8 (4) (a) and (b) and Article 5(4)(a) and (b) of the Directive (EU) 2015/2436 and they are protected similarly to the EUIPO trademarks.
4. On September 10, 2022, the Respondent registered the domain name <epta-agencies.com> ("the disputed domain name").
5. The disputed domain name is confusingly similar to the EUIPO trademarks because it contains without the permission of the Complainant the word "epta" and the word "agencies" the latter of which is descriptive and generic, which does not render a unique impression and increases the misleading nature of the disputed domain name, as it gives the false impression that the Respondent is an official European institution and is repeated in the aforesaid trade name of the Respondent.
6. The Respondent does not have a right or legitimate interest in the disputed domain name as:
 - (a) the only body under EU law to be active in the field of intellectual property rights in the European Union is the Complainant;
 - (b) the use by the Respondent of the disputed domain name including on its website is calculated to confuse owners of intellectual property into mistaking the Respondent for the Complainant or another official EU agency for the purpose of obtaining money illegally;
 - (c) the Respondent uses the term EPTA on its resolving website which wrongly purports to impersonate a European/ EU Agency;
 - (d) the Respondent uses the disputed domain name solely for a fraudulent business model aimed at obtaining unlawful profit by unfair competition constituted by passing itself off as the Complainant or a similar institution.
7. The Respondent has registered and used the disputed domain name in bad faith. That is so because:
 - (a) the Respondent's business model is built on creating the aforesaid confusing impression which is increased by sending misleading letters to the owners of intellectual property registered with the Complainant;
 - (b) the aforesaid letters both in their printed or electronic form appear like invoices issued by the Complainant for its services as the authority responsible for maintaining the official trademark register and data base;
 - (c) the purported invoices are drafted in a manner to hide the fact that they are a proposal to enter into a contract for registration in a certain "private database" of trademarks;
 - (d) the purported invoices do not contain a transparent and clearly visible disclosure that the sender is not an official body and that the registration is not linked to registration in the official trademark database of the Complainant;
 - (e) in so far as that information is disclosed, it is only vaguely disclosed in very small and visually unremarkable print at the bottom of the letter and is highly likely to go unnoticed by most customers;
 - (f) the Respondent is on the list of senders of misleading letters published by the Complainant and on similar lists published by the World Intellectual Property Organization and other public institutions;
 - (g) the Respondent has used the reputation of the Complainant for its own benefit and creates a significant risk of confusion in the eyes of its customers by offering them useless and overpriced services;

(h) the Respondent has used the disputed domain name to engage in fraudulent conduct for profit and in bad faith by attracting the owners of registered intellectual property to its website;

(i) the Respondent has used the disputed domain name to generate confusion with the Complainant and EUIPO trademarks; and

(J) the Respondent has detracted from the reputation of the Complainant.

8. The Complainant therefore seeks the following remedy: "The Complainant requests the **REVOCATION** of the disputed domain name".

B . RESPONDENT

The Respondent failed to submit a Response in this proceeding.

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

JURISDICTION AND THE REMEDY SOUGHT BY THE COMPLAINT

At the outset, the Panel has given consideration to whether it has jurisdiction to hear this Complaint and if there is jurisdiction, whether it is appropriate to make the order apparently being sought. That comes about from a succession of documents attached to the Complaint and the order for Revocation that is sought by the Complainant.

The first document is what might be called a letter of demand dated August 8, 2024 from the attorneys for the Complainant addressed to the Respondent. This letter refers to the disputed domain name, but not as the subject of proceedings under the UDRP, which this proceeding is, but as the basis to challenge "unlawful activity" of the Respondent as trademark infringement, based as it says, on the Paris Convention for the Protection of Industrial Property and certain Directives of the European Union and on the Respondent's misleading conduct of the type outlined above in the Factual Background. Indeed, although the letter is 6 pages in length, it does not make a single reference to the UDRP (other than a footnote reference to the Rules made under the UDRP). The Complainant's claim is that the words "epta" and "agencies" are confusingly similar to the Complainant's EUIPO trademarks, although neither the word "epta" or the word "agencies" appears in any of those trademarks. The letter makes a demand that the Respondent should cancel the disputed domain name.

The second document is a Power of Attorney from the Complainant addressed to the Respondent and which is contained in the letter of demand. The Power of Attorney purports to authorize its nominated attorneys to take action with respect to two other domain names, namely <euoip-offices.com> and <eipo-office.com> in addition to the disputed domain name, but again makes no reference to the UDRP or that proceedings will be taken under it.

The third document is a letter dated August 8, 2024 from the aforesaid attorneys to the Respondent asking for the cancellation of the disputed domain name, but again makes no reference to the UDRP or proceedings under it. It also purports to attach a "pre-trial" notice

which appears to be a page of address labels.

The fourth document is the “pre-trial notice” which asks for the cancellation of the disputed domain name.

Finally, the Complainant has instituted this proceeding and asserts in the Complaint that the grounds on which it makes its claim are under “the Rules for Uniform Domain Name Dispute Resolution Policy effective 31 July 2015 through 20 August 2025 (the “**Rules**”), which is itself not correct, as the Rules do not confer jurisdiction over this proceeding, as it is only the Policy itself that binds the Respondent and confers jurisdiction. Moreover, although the Policy entitles the Complainant to obtain transfer or cancellation of the disputed domain name, the Complainant ask for neither. Rather, it requests “Revocation” of the disputed domain name which is not one of the remedies that the Panel can award under this proceeding.

The Panel is therefore concerned whether it can entertain a proceeding purporting to be under the UDRP Rules and when it seeks, solely, a remedy that is not available under the UDRP itself and which purports to be a claim for trademark infringement. The Panel also doubts if the Respondent has been given any or any proper notice in the aforesaid documents that proceedings are to be instituted against it under the Policy.

As will be seen, these consideration will have no practical effect, as the proceeding will fail on far more substantive grounds, but it is only proper to note that complainants should make it clear to prospective respondents who have acquired domain names that a claim is being made against them under the UDRP, if that is what is intended, specifically naming the Policy and should seek only the relief that is available under the Policy and no other relief, when such a claim may cause confusion to respondents, putting at risk their entitlement to a fair hearing.

The Panel will therefore proceed on the assumption that it has jurisdiction and proceed to deal with the respective issues that arise under the Policy.

DISCUSSION AND FINDINGS

A. Administrative compliance

By notification dated November 8, 2024 and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that it did not identify the current holder of the domain name. The notification invited the Complainant to have regard to the Registrar’s verification available in the online case file regarding the current domain name holder. Also on November 8, 2024, the Complainant filed an Amended Complaint and the CAC determined that the Complaint should be admitted to proceed further in the Administrative Proceeding.

B. Substantive matters

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

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

- the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- Respondent has no rights or legitimate interests in respect of the domain name; and
- the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See: eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire, FA 157287 (Forum June 26, 2003) (“Because Complainant did not produce clear evidence to support its subjective allegations [...] the Panel finds it appropriate to dismiss the Complaint”).

It is therefore clear from the Policy that the Complainant must establish all 3 of the foregoing elements and that if it fails on any one of those elements it will fail in the proceeding as a whole.

Identical and/or Confusingly Similar

The first question that arises is whether the Complainant has rights in a trademark or service mark on which it may rely. The Complainant submits that it does in fact have such trademark rights. It first submits in that regard that it “has acquired” well-known unregistered trademarks including (i) word marks “EUIPO” or “European Union Intellectual Property Office” and (ii) figurative marks combining these words with characteristic yellow and blue colours, and other symbols similar to other EU institutions and bodies (together the “EUIPO Trademarks”). It has long been well-established that unregistered or common law trademark rights are valid and recognized as meeting the requirement under paragraph 4(a)(i) of the UDRP that a complainant must show “a trademark or service mark in which the complainant has rights.” However, it is equally well-established and for very good reasons that a complainant that relies on an unregistered or common law trademark must prove it and in particular must prove when, where and how it arose. In that regard, prior UDRP panels have consistently held and emphasized that the complainant in such a case must show all of the facts that demonstrate that the unregistered mark came to be used as demonstrating the source of its goods and services and that it has come to

be so recognized in the relevant community or market. The evidence required of such indicia has frequently been said to be evidence of how strong is the asserted mark, how long it has been in use and where and how it has been seen by the community, in the media and in advertising as well as by such tests of recognition in public opinion surveys, as the source of the complainant's goods and services. In the recognized text book on the subject, the learned author states[1] "Panels generally require complainant to make a strong showing with relevant evidence to qualify for acquired distinctiveness." Panels have been particularly concerned that the evidence should also show when the asserted mark came to be so used and recognized. As the same textbook notes, '(a)s a prerequisite, (complainants') reputations must predate the registrations of the disputed domain names." [2] That is very important in the present case as the unchallenged evidence is that the disputed domain name was registered on September 10, 2022 and the four registered trademarks on which the Complainant also relies were registered on August 17, 2023, July 27, 2023, August 17, 2023 and July 27, 2023 respectively, all of which dates are subsequent to the registration of the domain name; indeed the trademarks were not applied for until February 21, 2023, February 21, 2013, August 17, 2023 and February 21, 2023 respectively; all of those dates were of course subsequent to the date on which the disputed domain name was registered. Accordingly, if the Complainant wishes to rely on its asserted unregistered trademarks, in addition to its registered trademarks, it must show by evidence that it acquired its unregistered trademark rights by September 10, 2022, which it has not done by evidence. The Complainant, it is true, asserts that it "has acquired well-known unregistered trademarks" and that it "holds" them, meaning presumably that it had acquired them by, and holds them on, the date the Complaint was filed, namely November 6, 2024, two years after the disputed domain name was registered. Beyond that, however, there is no evidence going to establish any unregistered or common law trademark and in particular no evidence that any such unregistered or common law trademarks were acquired before the disputed domain name was registered.

The Complainant is therefore not able to rely on its submission that it either has or ever had the unregistered trademarks asserted because no such trademarks have been proven.

It should also be noted here that even if the Complainant had established the unregistered trademarks it asserts, which, according to the Complainant itself, are for EUIPO and EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE, the disputed domain name could not be said to be confusingly similar to either of those trademarks as they do not contain either the word "epta" or "agencies".

The Complainant does in fact also submit, secondly that it has four registered trademarks.

The evidence has established that the Complainant is the registered owner of the following registered trademarks:

- the international trademark for EUIPO, registered number 1751909, registered on August 17, 2023;
- the international trademark for EUIPO, registered number 018839087, registered on July 27, 2023;
- the international trademark for EUIPO EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE, registered number 1753711, registered on August 17, 2023; and
- the international trademark for EUIPO EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE, registered number 018839135, registered on July 27, 2023

(collectively "the EUIPO trademarks").

The Complainant has established those registrations by documentary evidence that the Panel has examined and finds to be in order.

The Complainant has thus established its trademark rights by virtue of the registered trademarks that it cites, and hence has established that part of its standing to bring this proceeding.

The next question that arises is whether the disputed domain name is identical or confusingly similar to the registered EUIPO trademarks. Clearly it is not identical, as it does not contain any portion of the trademarks, let alone their entirety. The Complainant is thus required to show that it is confusingly similar to the trademarks. Panel finds that the disputed domain name is not confusingly similar to the EUIPO trademarks for the following reasons.

The Complainant must show that the disputed domain name <epta-agencies.com> is confusingly similar to the EUIPO trademarks. So, it must first establish that the two are similar to each other. But they are clearly not so. Often, confusing similarity is shown by the fact that the disputed domain name actually contains the relevant trademark, as if this is shown it is clear that the domain name is, at least *prima facie*, invoking or referring to the trademark. But the term "epta" does not appear in the EUIPO trademarks at all; not does the term "agencies" appear in the trademarks. Accordingly, from the beginning, the Complainant is going to have an uphill battle to show that there is any similarity at all between the disputed domain name and the trademarks. Indeed, any objective observer would find it impossible to see that there is any such similarity. Likewise, it is difficult to see how any internet user would be confused between the disputed domain name and the trademarks. For internet users to be confused, it would have to be shown that they would-or even that they might- think that the disputed domain name was invoking or referring to the trademark when there is nothing to suggest in the present case that it is invoking or referring to any of them, as they consist only of the initials of the business apparently conducted by the Respondent and the word "agencies".

Here, it must be emphasised that UDRP panels have long held and on good grounds that in making the comparison required, a panel must have regard only to the words of the disputed domain name and the wording of the relevant trademark, without regard to any extraneous considerations such as surrounding circumstances or, in particular, how the domain name has been used. Principally, this is because paragraph 4(a)(i) of the UDRP, where the Panel's task is articulated, directs the Panel that the confusing similarity required to be shown is between the disputed domain name and the "trademark", not between the domain name and the way it has been used or anything else, as such matters are clearly to be dealt with under the later provisions of the Policy dealing with rights and legitimate interests and registration and use in bad faith.

The Complaint is therefore seriously deficient in not addressing or citing any factor showing either similarity or confusing similarity. Rather, the Complaint deals exclusively with, first, the contention that the "website", not the domain name, is confusingly similar to the

EUIPO Trademarks which is clearly not the question at issue. The Complaint also asserts that the disputed domain name contains the term "epta" which it obviously does, but "epta" is not part of the EUIPO Trademarks. The Complaint also contends that the word "agencies" is "the key element of the EUIPO Trademarks" which it clearly is not, as it does not appear anywhere in the trademarks and it is surprising that such a claim could be made when it clearly cannot be supported. Moreover, the substance of the Complainant's contentions is that the disputed domain name is misleading because it creates the false impression that the Respondent is an official EU institution, that the resolving website imitates the EUIPO Trademarks, uses the yellow and blue colours of the EU, has a Brussels address and uses the word "European". But all of these considerations are relevant only to rights and legitimate interests and registration and use in bad faith and not to whether the domain name itself is confusingly similar to the EUIPO trademarks. There is therefore nothing to show that the terms "epta" or "agencies" are either in the trademarks or confusingly similar to them.

Accordingly, the Complainant has not established that the disputed domain name is identical or confusingly similar to the EUIPO trademarks.

That being so, the Complainant has not established the first of the 3 elements under the UDRP that it is required to establish and cannot succeed in this proceeding.

Rights or Legitimate Interests and Registration and in Bad Faith

As the Complainant has failed on the first element, confusing similarity, it cannot succeed in the proceeding as a whole. It is therefore not strictly necessary to consider either of the remaining two elements. In particular, the Panel finds no need to deal with the issue of rights and legitimate interest as, even if the Complainant were to succeed on that element, it would still fail in this proceeding as it has already failed on the first element of confusing similarity and, as will be seen, it also fails on the issue of bad faith registration. For reasons of completeness, however, the Panel will deal with the element of registration and use of the disputed domain name in bad faith. The Complainant is obliged by the Policy to prove both bad faith registration and use in bad faith. Thus, if it fails to prove either, it will not have proved this element. The Panel will consider this issue because it is clear from the terms of the Policy, and the evidence, that the Complainant cannot show that the Respondent registered the disputed domain name in bad faith. That is so because the Policy specifically requires that the Complainant must prove registration in bad faith and that such bad faith must be engendered because of the existence of a trademark at which it is directed. Thus, it is and has long been an accepted principle in this field of arbitration that if there were no such trademark in existence at the time the disputed domain name was registered, the registration of the domain name cannot be said to have been in bad faith. As the learned author of the abovementioned textbook summarized the situation:

"However, if a domain name has been registered in good faith but bad faith use commences at a later time and separated from the registration, the complainant fails to make its case and the complaint must be dismissed (emphasis added)." [3]

Likewise, the current practice has been summarized at paragraph 3.8.1 of the WIPO Overview 3.0[4] as:

"Subject to scenarios described in 3.8.2 below, where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent."

Not only is that a well-established principle, but it is applied in current decisions of panellists when this issue arises for consideration. For example, a very recent decision of that application is to be found in *Viking Exchange & Marketing Inc. v. Volodimir Chmil / Paysine Ltd*, FORUM decision FA2409002114188 (October 4, 2024) where the learned panelist was faced with the fact situation that the disputed domain name was registered on September 28, 2015, but the Complainant's trademark was not registered until September 24, 2024. Thus, the panelist concluded that "...Respondent could not have been aware of Complainant's then non-existent mark when Respondent registered the ...domain name..." and the Complaint failed.

Nor could the present case conceivably come with any of scenarios listed in the WIPO Overview of exceptions to this well-established principle, as there is no evidence that the domain name was registered in contemplation of the Complainant's nascent trademark rights, a corporate merger, the Complainant's insider knowledge or media attention.

The current Panel would also add that the notion of the registration having been in bad faith is further negated by the fact that the disputed domain name registered was in any event not confusingly similar to any of the four trademarks that the Complainant registered two years later, contained no part of the subsequently registered trademarks and there has been no attempt to prove on the established tests a common law or unregistered trademark or when it arose.

Accordingly, the Complainant has not shown that the disputed domain name was registered in bad faith at a time when the Complainant had the trademark rights it relies on.

Finally, in addition to the specific provisions of the UDRP Policy and having regard to the totality of the evidence, the Panel finds that the evidence does not establish any other ground on which the Respondent registered the disputed domain name in bad faith within the generally accepted meaning of that expression.

Indeed, the evidence that the Respondent registered the disputed domain name in bad faith is equivocal. The Panel has no illusions about the conduct of the Respondent in general. Indeed, the pivotal invoice apparently sent out by the Respondent certainly contains some dubious expressions, to the extent that some internet users may have thought that it was an official invoice from the European Union Intellectual Property Office, but it also has the heading "EPTA European Patent and Trademark Agency" which is its own name. Moreover, the invoice is of limited value as it was issued before the disputed domain name was registered and before the Complainant's trademarks were registered. It also contains a statement to the effect, as the Panel interprets it, that it is not the European Union Intellectual Property Office and that the service being offered by the Respondent is to have the details of the trademark applied for through that Office to be "register(ed)in our private data base website" which is "not affiliate(ed) with the official Community Trade Mark edition...". The Complainant says that this statement is "vaguely disclosed in very small and visually unremarkable print at the bottom of

the letter and is highly likely to go unnoticed by most consumers". The Panel notes that although the print is small, the Panel saw it readily, the statement is visible and it could easily be read by any user who really wanted to read it.

For all of these reasons the Panel finds that the Complainant has not made out a persuasive case that the disputed domain name was registered in bad faith.

The Complainant therefore has not made out the third of the three elements that it must establish.

The Complainant has therefore not established all three of the elements that it must show under the Policy and is not entitled to the relief it seeks, either "revocation", or either of the forms of relief provided for in the Policy, namely transfer or cancellation.

The disputed domain name should therefore remain with the Respondent.

Reverse Domain Name Hijacking

Reverse Domain Name Hijacking (RDNH), is a significant part of the successful arbitration process established under the UDRP and similar policies to resolve domain name disputes. Not only is it significant, but it is integral to the system as an instrument to deter abusive claims being made, or claims that could not be proved, when it is obviously not in the public interest that such claims are made. The Panel has therefore considered whether a finding of RDNH should be made.

On the one hand, the Complainant is a trademark owner and it has the right to take proceedings to prevent its trademark from being tarnished or compromised in breach of the UDRP. Moreover, the evidence shows that there are at least some indications that the Respondent was not adverse to including in the invoice it sent out, some wording that may well have induced some internet users to believe that the EPTA is an official body.

On the other hand, that invoice, the only one relied on by the Complainant, was dated well before the Complainant acquired its registered trademark rights and there is no evidence of any such invoices having been issued after the registration of the Complainant's trademarks.

More importantly, however, for present purposes, the Complainant must have realised that its chances of succeeding on the case it presented and the evidence it used to prove that case were slim and probably non-existent. It must have and should have realised that when the disputed domain name was registered on September 10, 2022 it, the Complainant, did not have any registered trademarks. It must also and should have realised that if it was to have any hope of proving bad faith registration of the domain name, it would have to establish a common law or unregistered trademark that pre-dates the registration of the disputed domain name. It asserted that it did have such rights but asserted only that it had them at the present time, i.e. at the time the Complainant was filed and not at any time prior to the disputed domain name being registered. Nor did it offer any evidence that it had such common law or unregistered trademark rights at any time.

When it came to whether the disputed domain name was identical or confusingly similar to the registered trademark, it must have and should have realised that it would be next to impossible to show that this was so. It opted for the submission that the disputed domain name was confusingly similar to the trademarks, but a simple comparison between the two should have told it that it could not sustain that submission. The Panel never had it explained how the words "epta" and "agencies" in the domain name were similar or confusingly similar to the words "EUIPO" or "EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE" in the trademarks when they clearly are not and are not included in the trademarks.

Even more significantly, the Complainant must have and should have realised that when it came to bad faith registration of the disputed domain name, it could not succeed because its only proven trademarks were applied for and registered well after the registration of the disputed domain name and the domain name could not have been registered in bad faith.

The Complainant therefore should not have filed this proceeding, knowing of these substantial defects in its case and yet it went ahead.

In the interests of maintaining the integrity of the UDRP and ensuring that when the UDRP is used it is used properly and capable of being supported by evidence, the Panel therefore finds that the Complaint was brought in bad faith in an attempt at Reverse Domain Name Hijacking or primarily to harass the domain-name holder within the meaning of Rule 15 (e).

[1] Levine, *The Clash of Trademarks and Domain Names on the Internet*, Legal Corner Press 2024, p.322

[2] Levine, *op cit*, p.322

[3] Levine, *op cit*, p.464

[4] WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **epta-agencies.com**: Remaining with the Respondent

PANELLISTS

Name **Neil Brown**

DATE OF PANEL DECISION **2024-12-10**

Publish the Decision
