Decision for dispute CAC-UDRP-107051

Case number	CAC-UDRP-107051
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Domain names	uynbiomorph.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Trerè Innovation S.r.l.

Complainant representative

Name	Avvocato Ivett Paulovics

Respondent

Name	Mesut Erdogan

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or concluded legal proceedings concerning the domain name <uynbiomorph.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant, Trerè Innovation S.r.l., claims rights to the following registered trade marks:

- EU trade mark registration no. 016950883, registered on 6 November 2017, for the figurative mark UYN, in classes 25 and 35 of the Nice Classification;
- International trade mark registration no. 1384243, registered on 19 October 2017, designating inter alia Türkiye, for the stylised mark UYN, in classes 25 and 35 of the Nice Classification; and
- EU trade mark registration no. 018996663, filed on 8 March 2024, and registered on 3 July 2024, for the figurative mark UYN biomorph, in classes 23, 25 and 40 of the Nice Classification.

These trade marks shall hereinafter collectively be referred to as 'the Complainant's trade marks'. Furthermore, the Complainant possesses numerous domain names incorporating the term 'uyn', most notably <uynsports.com>, registered in 2017 and actively utilised as the Complainant´s primary website for the promotion of UYN products.

The disputed domain name <uynbiomorph.com> was registered on 8 March 2024 and currently resolves to a page hosted by GoDaddy, which advertises it for sale at the price of USD 2,850.

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant is a distinguished Italian clothing manufacturer with a rich heritage surpassing 70 years. It is widely acknowledged for its innovation within the sports apparel sector. The UYN brand, launched in 2017, has rapidly garnered acclaim, particularly the UYN biomorph line designed for winter athletes.

B. Respondent's Factual Allegations

The Respondent has failed to submit a Response in this UDRP administrative proceeding, resulting in the Complainant's allegations remaining uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

A.1 Identity or Confusing Similarity

The Complainant asserts that the disputed domain name is either identical or confusingly similar to its trade marks, specifically UYN and UYN biomorph. The disputed domain name directly incorporates the trade mark UYN biomorph. The addition of the term 'biomorph' does not sufficiently distinguish it from the Complainant's core trade mark.

The test under the UDRP Policy requires a comparison between the trade mark and the domain name, where complete incorporation or the presence of dominant features typically leads to a finding of confusion (refer to paragraph 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ('the WIPO Jurisprudential Overview 3.0'). Furthermore, the generic Top-Level Domain ('the TLD') suffix (<.com>) is a standard registration requirement and bears no weight in this determination, thereby heightening the risk of confusion (see paragraph 1.11 of the WIPO Jurisprudential Overview 3.0).

A.2 Respondent's Lack of Rights or Legitimate Interests

In accordance with paragraph 4(a)(ii) of the UDRP Policy, the Complainant must establish a prima facie case indicating that the Respondent lacks rights or legitimate interests in the disputed domain name.

The registration date of the disputed domain name, coinciding with the Complainant's application for the EUTM for UYN biomorph on 8 March 2024, suggests a deliberate act rather than mere coincidence. The disputed domain name is thus identical or confusingly similar to the Complainant's trade marks; UDRP panels have consistently found that such conduct entails a high risk of implied affiliation and does not constitute fair use, even when the domain name features an additional term (refer to paragraph 2.5.1 of the WIPO Overview 3.0).

The Respondent, identified as 'Mesut Erdogan', of Ankara, Türkiye, bears no affiliation to the Complainant, and there is a conspicuous absence of evidence supporting any rights or legitimate interests in the disputed domain name. The Respondent's solicitation of USD 2,850 for the disputed domain name indicates speculative intent, absent any bona fide commercial use. It is therefore concluded that the Respondent possesses no rights or legitimate interests regarding the disputed domain name.

A.3 Registration and Use in Bad Faith

The Complainant further contends that the registration and use of the disputed domain name constitute to bad faith. The Complainant has held rights to the UYN trade mark since 2017 and submitted a trade mark application for UYN biomorph on the exact date the disputed domain name was registered, rendering it implausible that such timing was coincidental.

The Respondent's actions imply an awareness of the Complainant's established reputation, as indicated by the high asking price and the immediate attempt to sell the disputed domain name. While the trading of domain names for profit is not inherently indicate of bad faith, the specific circumstances in this instance suggest clear intent to exploit the Complainant's trade marks. The Complainant's request for transfer of the disputed domain name is therefore substantiated by evidence of bad faith under paragraph 4(b)(i) of the UDRP Policy, wherein the Respondent acquired the disputed domain name with the primary purpose of selling, renting, or otherwise transferring it to the Complainant or a Complainant's competitor for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name. The Complainant further alleges violations of paragraph 2 of the UDRP Policy by the Respondent.

B. Respondent's Submissions

The Respondent's default in this UDRP administrative proceeding has resulted in the failure to advance any substantive case on the merits.

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, 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 Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the UDRP Policy).

PROCEDURAL FACTORS

1. Unsolicited Filing

On 4 December 2024, the Complainant submitted unsolicited correspondence, which the Panel has chosen to accept into the case record due to its relevance to this case. In this filing, the Complainant highlights that the Respondent provided false contact details, specifically a non-existent postal address, at the time of registration of the disputed domain name.

2. Miscellaneous

The Panel is satisfied that all procedural requirements under UDRP have been duly met. Furthermore, there are no grounds that would preclude the issuance of a decision in this matter.

PRINCIPAL REASONS FOR THE DECISION

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint based on the statements and documents submitted, along with the UDRP Policy, the UDRP Rules, and any applicable rules and principles of law.

Under paragraph 4(a) of the UDRP Policy, the Complainant must establish three critical elements for a successful claim:

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 are being used in bad faith.

The burden of proof lies with the Complainant to prove all three elements. The standard of evidence in UDRP administrative proceedings is the balance of probabilities, and the Panel will now assess each of three grounds in turn.

B. Identical or Confusingly Similar

This criterion requires a direct comparison between the disputed domain name and the Complainant's established rights. In order for the Complainant to succeed, it must present evidence demonstrating ownership of valid trade mark rights.

The Panel is satisfied that the Complainant possesses established rights through its trade mark registrations for UYN and UYN biomorph. A straightforward examination reveals that the disputed domain name is at least confusingly similar to the Complainant’s trade marks, especially as TLDs are largely irrelevant in this determination under the UDRP Policy.

Consequently, the Complainant has fulfilled the requirement set forth in paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent's default in this UDRP administrative proceeding empowers the Panel to draw adverse inferences (refer to Rule 14 (b) of the UDRP Rules).

The Panel finds that the Respondent, whether as an individual, business, or other organisation, is not commonly known by the disputed domain name, nor has it received any authorisation from the Complainant to register and/or use the disputed domain name.

Furthermore, the Panel notes, based on the unchallenged evidence on record, that the Respondent has not made any bona fide use of the disputed domain name for a legitimate offering of goods or services, nor for fair use that is noncommercial in nature.

The Complainant has therefore satisfied the second requirement of the UDRP Policy.

D. Registered and Used in Bad Faith

The evidence presented by the Complainant unequivocally demonstrates that the disputed domain name is currently offered for sale at the price of EUR 2,850, raising concerns of bad faith under paragraph 4(b)(i) of the UDRP Policy.

The Complainant effectively establishes that the disputed domain name was registered on the exact same date as the application for the trade mark UYN biomorph, which casts some doubt on coincidence. Furthermore, the Respondent's conduct exhibits a disregard for the Complainant's established rights, particularly as the Respondent has not challenged the Complainant's assertions in this case.

While the act of offering a domain name for sale does not in and of itself establish bad faith, the absence of evidence that the Respondent is engaged in the legitimate business of domain resale is striking. There is no indication that the Respondent adheres to the accepted practices of that industry from the available case record.

In addition, the Complainant asserts that the Respondent employed a fictitious postal address during the registration of the disputed domain name. The Panel considers the provision of false contact information as an indicator of bad faith. In this instance, the Respondent appears to have adopted a deceptive postal address and has notably failed to challenge the Complainant's assertion.

Accordingly, the Panel finds that, based on the available case record, the Respondent registered and has used the disputed domain name with full awareness of its implications, seeking to exploit the Complainant's trade marks, likely for profit, thus falling within the scope of paragraph 4(b)(i) of the UDRP Policy.

In view of these findings, the Complainant has satisfied the third and final requirement of the UDRP Policy.

E. Decision

For the foregoing reasons, in accordance with paragraph 4(a) of the UDRP Policy and Rule 15 of the UDRP Rules, the Panel orders that the disputed domain name <uynbiomorph.com> be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **uynbiomorph.com**: Transferred

PANELLISTS

Name	**Gustavo Moser**

DATE OF PANEL DECISION 2024-12-11

Publish the Decision