Decision for dispute CAC-UDRP-107921

Case number	CAC-UDRP-107921
Time of filing	2025-10-07 10:30:11
Domain names	gabler.com

Case administrator

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

Complainant

Organization	Gabler Maschinenbau GmbH

Complainant representative

Name	Dr. Jasper Prigge LL.M.

Respondent

Name	Stanley Pace

Respondent representative

Organization	John B. Berryhill LLC

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

In these proceedings, the Complainant initially relied on an EU trademark application provided by the Complainant and later in its supplemental filing solely relied on the following trademark:

- GABLER (wordmark), International Registration No. 1879324, registered as of July 28, 2025, in the name of Gabler Machinenbau GmbH (the Complainant) submitted by the Complainant in its supplemental filing.

It is worth noting that, at the time of the filing of the Complaint, the above International Trademark No. 1879324 had not yet been examined in the designated countries and was not protected in any of the designated countries.

- The Panel discovered the following EU trademark registration that was mentioned in the Complaint, in the course of its independent research (see below): the EU trademark registration No. 018213448 “Gabler” (word), filed on March 20, 2020 and registered on February 4, 2021.

Further, the Complainant owns some other trademarks for GABLER in various countries, but not in the USA, where the Respondent is apparently located. The Complainant failed to identify those trademarks, as also quite a few expired or ended trademarks for GABLER that it used to own in the past, including in the USA.

FACTUAL BACKGROUND

From information that the Panel has gathered from the internet, it seems that the Complainant is a large German-based international company, well-known in marine technology and, especially, in the field of submarine and special-purpose machinery, characterized of experience and global market reach. For more than 60 years, the Complainant appears to excel in the manufacturing of extension equipment and components for naval and marine technology.

The Complainant itself provided very little information about its business in its submissions.

The Complainant owns a small-sized portfolio of trademarks including the wording "GABLER", among which an EUTM dating back to 2020. It also owns a few related domain names, such as <gabler-naval.com> since September 6, 2018.

The disputed domain name <gabler.com> was registered on December 14, 1998, and was purchased in an auction by the Respondent in 2016, as stated by the Respondent himself.

The Respondent is apparently a domain name investor who trades in domain names consisting of common words, including common surnames.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant essentially contends that the Disputed domain name is confusingly similar to its “GABLER” trademark; that the Respondent lacks rights or legitimate interests in the Disputed domain name, and; that the Respondent registered and used the Disputed domain name in bad faith.

For all these reasons, the Complainant requests a transfer of the Disputed domain name to itself.

RESPONDENT

On the contrary, the Respondent supports the opposite views.

In particular, the Respondent claims that a pending trademark application is not enough to establish trademark rights for the purpose of the UDRP, the Respondent alleges its legitimate interest in the Disputed domain name as a domain name investor who trades in domain names consisting of common words, including common surnames; claims that he did not target the Complainant, as “Gabler” is a popular surname and many businesses and persons use it and it is not associated only or primarily with the Complainant, , and states that the Complainant has failed to prove any bad faith of the Respondent in both registration and/or use of the Disputed domain name.

The Respondent, therefore, requests that the Complaint be denied.

RIGHTS

The Complainant failed to provide evidence of any registered trademark and only claimed that it filed an EU trademark application. What the Complainant attached as its alleged EU trademark application was in fact, an international application filed via the EUIPO to WIPO based on its earlier EU trademark registration that the Complainant failed to identify.

The Complainant also claims that it owns a business name.

It is well established in UDRP jurisprudence and confirmed by WIPO Overview 3.0 that a pending trademark application would not by itself establish trademark rights for the purpose of the Policy, see sec. 1.1.4 of WIPO Overview 3.0. Business or company name as such does not establish trademark rights either in the absence of any evidence of unregistered trademark rights.

The Complainant does not allege common law trademark rights and does not provide any evidence that would somehow establish that the Complainant may have unregistered trademark rights in the term “Gabler”. The only evidence provided by the Complainant is an extract from the German commercial register. This is not enough to establish common law trademark, see e.g. sec. 1.3 of

WIPO Overview 3.0 and **CAC-UDRP-106217**: “The Complainant does not own a trademark registration for ABD Cosmetics GmbH, however, the Complainant claims that the Disputed Domain Name is identical to the Complainant´s company “ABD Cosmetics GmbH” to which the Complainant claims trademark use rights… For the current case, the Complainant provided with only some limited evidence which cannot prove a long and continuous use of the mark and, therefore, it is impossible to confirm that the mark has become a distinctive identifier which consumers associate with the complainant’s goods and services”.

However, the Panel discovered that the Complainant actually owns the EU trademark registration no. 018213448 “Gabler” (word), filed on March 20, 2020 and registered on February 4, 2021. That registration number was mentioned in the trademark application, however, the Complainant failed to provide appropriate evidence and failed to identify this EU TM registration in its submission.

Therefore, the Complainant owns a trademark for the purpose of the first element of the Policy.

The Panel further notes that the registration of the disputed domain name by the Respondent predates the filing and registration date of the Complainant’s trademark. While this is not relevant for the first UDRP element, this will be relevant for the second and the third UDRP elements below.

Thus, the Complainant owns a registered EU trademark and the disputed domain name is identical to the Complainant’s trademark.

Therefore, the Complainant satisfies the first UDRP element.

NO RIGHTS OR LEGITIMATE INTERESTS

The Panel finds that the Complainant failed to demonstrate that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent established its legitimate interest in respect of the disputed domain name.

The Respondent acquired the disputed domain name in January 2016 in a domain name auction upon its expiration after having been registered by a person named "Gabler". The Respondent claims that he has a legitimate interest as a domain name investor who buys and sells surname domain names.

First, the Panel finds that there was no evidence of any trademark rights of the Complainant at the time of registration of the disputed domain name by the Respondent in January 2016. The Complainant failed to establish common law trademark rights and there is no evidence on record that the Respondent based in the US was somehow aware of the Complainant based in Germany when he acquired the disputed domain name in January 2016.

Second, the disputed domain name is indeed a surname common in Germany and some other countries. The Complainant also failed to provide any evidence that the Respondent acquired the disputed domain name back in 2016 to take unfair advantage of the Complainant’s mark.

It is well-established that domain investors have legitimate interest and trading in domain names when done without intent to profit from other’s trademarks can in and of itself, constitute a “legitimate interest” under the Policy, see WIPO Overview 3.0, sec. 2.1.: “For example, generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be bona fide and is not per se illegitimate under the UDRP”.

This legitimate interest usually extends to dictionary words, acronyms, surnames, brandable domain names or other names that can be attractive to numerous potential buyers in the absence of evidence of targeting with intent to take unfair advantage of the complainant’s mark. There is extensive UDRP case law that supports this view, including the following decisions: Lucien William Valloni v. Domain Administrator, NameFind Cayman Islands Ltd., WIPO Case No. D2024-5126; **CAC-UDRP-106685; CAC-UDRP-106684:** “See also WIPO Overview 3.0, section 2.1: “generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be bona fide and is not per se illegitimate under the UDRP.” Although “Alimonti” is not necessarily an acronym, dictionary word or common phrase, its status as a not uncommon surname fits within the same criteria” and Academy, Ltd. v. Ramesh Singh, Forum Claim Number: FA2301002026883.

There is no evidence that the Respondent was aware of the Complainant and targeted the Complainant’s mark on the date the Respondent acquired the disputed domain name.

Therefore, the Panel finds that the Respondent has established sufficient legitimate interest under 4 (c) of the Policy and that the Complainant failed to establish the second UDRP element.

BAD FAITH

WIPO Overview 3.0 states that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark (see sec. 3.1). Targeting with intent to take unfair advantage of the complainant's mark is important in establishing bad faith.

Targeting is present where the respondent registered the domain name specifically because of a complainant's trademark to take unfair advantage of the complainant's mark.

Moreover, it is well established that the Complainant needs to prove that the domain name was both registered and is being used in bad faith. This is a clear requirement of the Policy (see par. 4 a. (iii) of the Policy).

It is also well-accepted that 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 (see sec. 3.8.1 of WIPO Overview 3.0).

The disputed domain name was registered in 2016, whereas the Complainant filed its EU trademark application in 2020. While the Complainant claims its existence since 1962, it failed to provide any evidence of common law trademark that predates Respondent's registration of the disputed domain name.

The Complainant does not explain why the Respondent should have been aware of the Complainant's alleged mark that was non-existent when the Respondent registered the disputed domain name. The Parties are from different countries located on different continents. The Complainant itself admits that "**There is no information available as to whether the domain was registered in bad faith**" in the Complaint and the Amended Complaint.

The Respondent provides credible evidence that "Gabler" is a common surname and is used by different businesses in different countries. It is not associated primarily with the Complainant.

Use by numerous third parties per se does not mean that there cannot be bad faith, if there is clear evidence of targeting (e.g. copy-cat website). However, when there is no evidence of targeting, in particular, when the disputed domain name pre-dates Complainant's trademark application by four (4) years, widespread use of the name by many independent parties and the fact that the disputed domain name is indeed a common surname, support Respondent's arguments on the absence of bad faith registration and use by the Respondent.

The reference by the Complainant to settlement correspondence between the Parties and an asking price for the disputed domain name, is not sufficient evidence of bad faith.

Domain name registrant who has a legitimate right or interest in respect of the disputed domain name is entitled to ask any price he/she wants. Asking price per se is not evidence of bad faith registration and use absent any specific intent derived from exploitation of the goodwill associated with a trademark.

This is well-established principle in UDRP jurisprudence and confirmed by numerous previous decisions, including **CAC – UDRP-106684;** Young Pharmaceuticals, Inc. v. Xiaopeng Zhou, WIPO Case No. D2024-1699**:** "A domain name investor usually has the intention of reselling domain names at a price in excess of the purchase price…There is no evidence that the Complainant was singled out as the "real" target of the Respondent"; Calmino group AB v. Domain Administrator, DomainMarket.com, WIPO Case No. D2024-1579: "In some circumstances, the price of the disputed Domain Name could be a factor that may allow the panel to infer that because only a business of the size of the complainant could or would pay that price, the respondent is targeting the complainant. On the other hand, if the disputed Domain Name in fact is registered without knowledge of the complainant and otherwise in good faith, then setting a high price would be a matter purely for the respondent in view of its business plans"; IBA SA v. Ousmane Ba, WIPO Case No. D2023-3619**:** "In any event there is nothing inherently wrong in asking a high price for a domain name which is legitimately held and the fact that the Disputed Domain Name is, as the broker put it "a premium domain name" would mean that such a suggestion was not surprising".

Respondent's statement in potential settlement communication that he would be prepared to challenge an unfavorable UDRP decision does not indicate bad faith either.

To sum up, the Complainant failed to provide any evidence of targeting and failed to establish bad faith registration and use of the disputed domain name by the Respondent.

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.

Supplemental filing by Complainant

After the Respondent submitted his response, the Complainant filed additional submission titled "Statement on the response to the complaint". The date of this supplemental filing is November 20, 2025.

This Complainant's supplemental filing is partially a rebuttal of the Respondent's response, provision of new information on Complainant's International Trademark and partially introduction of some new arguments based on possible settlement discussion between the Parties.

The UDRP is a simplified procedure that consists of a complaint and a response.

The Panel, at its sole discretion, may request further statements or documents from either of the Parties under Rule 12. Rebuttals

are generally not accepted.

The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and the Rules and the Panel shall determine the admissibility, relevance, materiality and weight of the evidence, see 10 (a) and 10 (d) of the Rules.

According to sec. 4.6 of "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition" (WIPO Overview 3.0): "Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel...In all such cases, **panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some "exceptional" circumstance)**."

Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel.

Here the Panel is prepared to partially accept the supplemental filing related to correspondence between the Parties in relation to potential settlement as this happened after the response was filed.

Panel's own independent research

The Panel remarks that the Complaint has not been filed in the usual format of a classic UDRP Complaint. However, the Panel, within the spirit of fairness and justice, will adapt the arguments of both the Complainant and of the Respondent in a way as to classify them as per the normal threefold test of paragraph 4(a) of the Policy.

Given the nature of this proceeding and the contentions of both Parties the Panel conducted limited research under its powers granted to the Panel by Rule 10.

Namely, the Panel checked the EUIPO TM registry to verify the alleged trademark rights of the Complainant mentioned in Annex 6 but not addressed by the Complainant, checked publicly available information about the Complainant and verified some of the Respondent's statements regarding wide-spread use of "Gabler".

The Panel's own independent research supports its findings provided below in the Principal Reasons section.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name wholly incorporates the Complainant's GABLER trademark. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent has established sufficient legitimate interest in the disputed domain name, by acquiring the latter in an auction, as a surname domain investor.

The Complainant has failed to prove the Respondent's bad faith at either registration or use of the disputed domain name.

Concurring opinion of Igor Motsnyi

I concur in the Panel's decision to reject the Complaint and I agree with the findings of my respected co-Panelists provided above, but I would make a finding of the Reverse Domain Name Hijacking (RDNH).

Under Rule 15 (e) 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. It is well established that the mere lack of success of a complaint is not itself sufficient for a finding of RDNH (see sec. 4.16 of WIPO Overview 3.0).

The Respondent did not ask for an RDNH finding. Nevertheless, even when RDNH is not expressly requested by a respondent and even in default cases, a Panel must still consider RDNH where appropriate taking into account Rule 15 (e) cited above.

RDNH is defined under the UDRP Rules as "using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name."

RDNH can take many forms, including "Plan B" (after failing to buy a domain name), fatally weak cases and cases where a complainant brought a complaint despite the fact that it knew or ought to have known that it could not succeed.

WIPO Overview 3.0 provides some reasons for finding RDNH, including:

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) unreasonably ignoring established Policy precedent notably as captured in WIPO Overview, iii) filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis and iv) basing a complaint on only the barest of allegations without any supporting evidence (see sec. 4.16).

Besides, some panels have held that a represented complainant should be held to a higher standard.

In my opinion, the finding of RDNH is appropriate for the following reasons:

1. The Complainant based its complaint on an alleged trademark application and business name right. This is not sufficient to establish the first UDRP element and the Complainant (or rather, its counsel) ignored UDRP requirements, UDRP jurisprudence and consensus views provided in WIPO Overview 3.0, in particular, sec. 1.1.4 and sec. 1.3 of WIPO Overview 3.0;
2. The Complainant ignored the fact that the disputed domain name was registered well before its trademark application date and did not try to provide any explanations, disregarding UDRP jurisprudence and the consensus expressed in WIPO Overview 3.0, sec. 3.8.1 in particular;
3. Once the Registrar Verification was provided, the Complainant updated the Respondent's details when it filed the Amended Complaint, however it still claimed that the Respondent "is unknown". Moreover, the Complainant filed this complaint in the belief that the registrant is a deceased person who clearly registered the disputed domain name in good faith, yet the Complainant failed to explain why the transfer should be justified. The Complainant continued to argue that the "the respondent is presumably deceased" and stated that "the deceased person is the current domain owner" in the Amended Complaint when the Complainant already had the Respondent's details;
4. The Complainant realized that it could not establish bad faith registration that is an absolute requirement of the UDRP in par. 4 a. (iii) of the Policy. To justify the domain name transfer, complainants should establish both registration and use in bad faith. Instead, the Complainant claimed the following: "There is no information available as to whether the domain was registered in bad faith, but it is clear that its current use is in bad faith". Even if there was proof of bad faith use (and there is none), that is not enough for the UDRP in the absence of bad faith registration;
5. The Complainant admitted that the main reason for filing this Complaint was its "high interest in the domain in order to be present internationally under its name". The Complainant's desire to obtain the domain name is understandable, however it does not justify filing a UDRP complaint without proper evidence and without proper arguments;
6. The Complaint represents a "Plan B", namely after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis. The Complainant admitted in its Complaint and its Amended Complaint that it had submitted an offer via "Sedo" that was unanswered and tried to reach out to the Respondent via a contact form but received no response;
7. The Complaint is based on "the barest of allegations" with very limited evidence, even without evidence of the Complainant's trademark rights and the Complainant presented a fatally weak case. The Complainant made some additional arguments in its Supplemental Filing (such as absence of legitimate interest for domain traders and high price per se as evidence of bad faith), yet these arguments again ignored the Policy provisions and UDRP jurisprudence;
8. The Complainant ignored UDRP jurisprudence and many available sources on the UDRP, including WIPO Overview 3.0 and publications available on the CAC website at https://udrp.adr.eu/website/articles; and
9. The Complainant is professionally represented.

For the reasons above, I find that this complaint was brought in bad faith and constitutes an abuse of the administrative proceeding (Reverse Domain Name Hijacking).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **gabler.com**: Remaining with the Respondent

PANELLISTS

Name	**Sozos-Christos Theodoulou**
Name	**Igor Motsnyi**
Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2025-12-09

Publish the Decision