

Decision for dispute CAC-UDRP-103805

Case number	CAC-UDRP-103805
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Time of filing	2021-05-13 09:10:16
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Domain names	t0uax.com
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Case administrator

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

Organization	TOUAX SCA – SGTR – CITE – SGT – CMTE – TAF – SLM TOUAGE INVESTISSEMENTS REUNIES
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Complainant representative

Organization	Nameshield (Laurent Becker)
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Respondent

Name	Frankie L Neal
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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 owns International trade mark number 971690 for TOUAX, which was registered on 29 February 2008.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a French operational leasing company. Its four businesses are river barges, modular buildings, freight railcars, and shipping containers.

The Complainant owns the international trade mark TOUAX, which predates the registration of the disputed domain name. It also owns the domain name <tuax.com>, which was registered on 24 January 1998.

The disputed domain name was registered by the Complainant on 26 April 2021 and is inactive.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade mark 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

Paragraph 4 (a) of the Policy requires the Complainant to prove each of the following three elements:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and used in bad faith.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Complainant states that the disputed domain name, <t0uax.com>, is confusingly similar to its trade mark, TOUAX. It is generally accepted that the addition of the top-level suffix “.com” is a standard registration requirement that can be disregarded when assessing whether the disputed domain name is confusingly similar to the Complainant’s trade mark. In the Panel’s view, replacing the letter “o” with the number “0” does not prevent the Complainant’s trade mark from being recognisable in the disputed domain name. On both textual and phonetical comparisons, the disputed domain name is confusingly similar to the Complainant’s mark. (See *Comerica Bank v Online Management/ Registration Private, Domains By Proxy LLC*, WIPO Case No. D2014-1018.)

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trade mark TOUAX and that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not associated with the Complainant. He has no business with the Complainant and is not licensed or authorised to make any use of the Complainant’s trade mark.

The Panel finds that the Complainant has made out a prima facie case that the Respondent lacks rights or legitimate interest in

the disputed domain name. The burden of proof now shifts to the Respondent to show that he has relevant rights.

The Respondent has not filed a Response nor submitted any evidence to show that he has rights or a legitimate interest in the disputed domain name. The Respondent is not identified in the Whois database as the disputed domain name and there is nothing to indicate that he is commonly known by that name. He has used a proxy service to register the disputed domain name which is a misspelling of the Complainant's trade mark. The disputed domain name is being passively held and there is no evidence to indicate any demonstrable plan to use it in connection with a bona fide offering of goods or services, nor is there any evidence of legitimate non-commercial use.

Taking the above factors into consideration the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. REGISTERED AND USED IN BAD FAITH

The Complainant's distinctive trade mark pre-dates the registration of the disputed domain name. The Respondent is not associated with the Complainant and there appears no reason why an unaffiliated entity would register a domain name that is confusingly similar to the Complainant's distinctive trade mark other than to create a likelihood of confusion with that mark. The Panel concludes that the Respondent registered the disputed domain name in bad faith.

The disputed domain name is being held passively. It is possible that a passive holding can amount to use in bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003).

The disputed domain name resolves to an inactive webpage. The disputed domain name is a misspelling of the Complainant's distinctive trade mark and appears designed to be confusingly similar with that mark. The Respondent has used a privacy service to conceal his identity, has failed to file a Response to the Complaint, and has not disputed any of the Complainant's assertions. The Respondent has provided no evidence of any actual or contemplated legitimate use of the disputed domain name. There appears no reason why the Respondent would register the disputed domain name other than to create a likelihood of confusion with the mark TOUAX. Any good faith use appears implausible. The passive holding by the Respondent of disputed domain name poses an ongoing threat the Complainant.

Taking all these factors into account, the Panel concludes that the disputed domain name was both registered and is being used in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TOUAX.COM**: Transferred

PANELLISTS

Name	Veronica Bailey
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DATE OF PANEL DECISION 2021-06-15

Publish the Decision
