

Decision for dispute CAC-UDRP-104299

Case number	CAC-UDRP-104299
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Time of filing	2022-01-27 08:37:08
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Domain names	team-hitachi.com
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Case administrator

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

Organization	Hitachi, Ltd.
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Complainant representative

Organization	RODENBAUGH LAW
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Respondent

Name	akhilesh bhargava
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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 submitted evidence that it is the registered owner of the following trademarks (hereafter: the “HITACHI Trademark(s)”):

- US trademark nr. 72065558: “HITACHI”, registered on July 19, 1960, valid for class 21;
- Japanese trademark nr. 1492488: “HITACHI”, registered on December 25, 1981, valid for class 7;
- EU trademark nr. 000208645: “HITACHI” (word mark), registered on December 12, 1999, valid for classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 36, 37, 38, 39, 40, 41 and 42;
- EU trademark nr. 1070192: “HITACHI” (word mark), registered on September 19, 2000, valid for classes 1 and 5;
- EU trademark nr. 002364313: “HITACHI” (word mark), registered on November 27, 2002, valid for class 40;

- EU trademark nr. 002809903: “HITACHI” (word mark), registered on October 10, 2003, valid for classes 41, 43, 44 and 45;
 - UK trademark nr. UK00000811836: “Hitachi”, registered on October 11, 1950, valid for class 9.
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FACTUAL BACKGROUND

Hitachi, Ltd. (hereafter the “Complainant”) is a Japanese multinational company founded in 1910 that offers consumer, business and government products and services. The products of the Complainant range from telecommunications and infrastructure solutions to construction machinery and electronic systems and equipment. The Complainant currently employs about 300,000 people worldwide.

Amongst others, the Complainant owns a company called Hitachi Astemo, Ltd., which is specialized in areas such as development, manufacture, sales and services of automotive components, transportation related components, industrial machines, and systems, etc.

The Complainant has submitted evidence that it is the registered owner of several HITACHI Trademarks, mentioned above under "Identification of rights".

The Complainant has submitted evidence that it uses the domain name <hitachi.com> and <hitachiastemo.com>.

The disputed domain name <team-hitachi.com> was registered on October 21, 2021.

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 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

1. Identical or confusingly similar

The disputed domain name consists entirely of the Complainant's HITACHI Trademark(s), with the addition of the term “team” and the general top-level domain “.com”.

The Panel finds that the addition of the above-mentioned terms in the disputed domain name does not sufficiently change the

overall impression of confusing similarity to the HITACHI Trademark(s). Firstly, the term “team” is merely a generic term. Secondly, there is the addition of the “.com” suffix, which, in this case, can be disregarded when it comes to considering whether the disputed domain name is confusingly similar to a trademark to which the Complainant has rights.

The Respondent did not file a response.

The Panel concludes that the disputed domain name is confusingly similar to the HITACHI Trademark(s) in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel has to weigh all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that:

- (1) The Respondent does not use, and has not used, the disputed domain name in connection with a bona fide offering of goods and services. The Complainant states that the Respondent merely attempts to defraud internet users for pecuniary gain. The Complainant argues that the disputed domain name resolves to a parking page.
- (2) The Respondent is not commonly known by the disputed domain name. The WHOIS record does not suggest that the Respondent is known by the disputed domain name. The Claimant argues that the Respondent is attempting to use the disputed domain name to profit from the Complainant's goodwill in the HATCHI Trademark(s).
- (3) The Respondent has not provided any evidence of demonstrable preparations for the use of the disputed domain name in connection with a bona fide offering of goods and services.
- (4) The Respondent does not use the disputed domain name for any legitimate or non-commercial fair use since the Respondent registered the disputed domain name to commit fraud. The Respondent attempts to commit fraud by sending emails to unsuspecting individuals.

The Panel finds that the Complainant has at least made a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

This finding is based on a combination of the following facts and arguments:

- (1) The Respondent is not related to the Complainant, and has not received any license or authorization to use the HITACHI Trademark(s) or any variation thereof;
- (2) The Respondent is not commonly known by the disputed domain name; and
- (3) There is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name (or

has any future plans to do so). On the contrary, it seems that the Respondent is using the disputed domain and an affiliated e-mail address to trick internet users into thinking the Respondent is an affiliate of the Complainant, and to solicit information and money of individuals. From the information provided by the Complainant (which is not contested by the Respondent), it seems that the Respondent uses the disputed domain name and the affiliated e-mail address to commit fraud.

The Respondent did not file a response.

On the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith registration and use

The Complainant states that:

(1) The Respondent intentionally attempted to divert internet users by creating likelihood of confusion, since the Respondent has made active use of the disputed domain name to defraud internet users.

(2) The Respondent registered the disputed domain name primarily for the purpose of disrupting the Complainant's business. The Respondent does so by sending e-mails, more precisely by mimicking the e-mail address of an employee of the Complainant. Internet users are likely to be confused about the source, recipients, and contents of the e-mails.

(3) The Respondent was or should have been aware of the Complainant's rights in the HITACHI Trademark(s), because of the similarities with the disputed domain name and the use of the logo of the Complainant in the e-mails, as well as the impersonation of the Vice President therein. Even if the Respondent did not have actual knowledge of the Complainant's HITACHI Trademarks, the Respondent had to investigate and refrain from using a domain name that infringes on a third party's (here: the Complainant's) rights.

(4) Respondent is perpetuating a common fraud and phishing scam to con internet users for the Respondent's own profit. The Respondent has registered the disputed domain name to create confusion and sent an email by pretending to be an employee of the Claimant.

The Respondent did not file a response.

The Panel finds that, on the balance of probabilities, it can be accepted that the Respondent had actual knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's HITACHI Trademark(s). It is highly unlikely that the Respondent would have registered the domain name (containing the Complainant's HITACHI Trademark(s)) without actual knowledge of the Complainant and its trademarks. Therefore, the Panel believes that the disputed domain name was selected by the Respondent for its similarity to the Complainant's registered HITACHI Trademark(s). Indeed, the disputed domain name consist of the Complainant's HITACHI Trademark(s), with the addition of the generic term "team".

The Panel believes that the Respondent has registered or acquired the disputed domain name primarily to divert internet users by creating a likelihood of confusion and to disrupt the business of the Complainant.

Moreover, from the evidence provided by the Complainant (which has not been contested by the Respondent), it seems that e-mails (or at least one e-mail) have (has) been sent from the e-mail address hr@team-hitachi.com whereby the recipient of the e-mail(s) is let to believe that he or she has been selected by the Complainant for a position as "sales & marketing manager" in Japan. In the e-mail, the recipient is asked to provide personal details and to pay an amount of 22.500 INR (Indian Rupees) as "security charges". Attached to the e-mail is an employment contract and remuneration schedule bearing the name and logo of the Complainant ("Hitachi" and "Hitachi Group") and bearing a forged signature of Mr Kojin Nakakita, who is the Vice President and Executive Officer of the Complainant.

Therefore, the Panel believes that the Respondent has used and registered the disputed domain name to perpetrate fraud, which is clear evidence of bad faith.

In the absence of any evidence to the contrary being put forward by the Respondent, the Panel believes from the facts and evidence submitted in this case that the Respondent had the HITACHI Trademarks of the Complainant in mind when registering and subsequently using the disputed domain name.

For all the reasons set out above, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TEAM-HITACHI.COM**: Transferred

PANELLISTS

Name	Bart Van Besien
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DATE OF PANEL DECISION	2022-03-03
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Publish the Decision
