

Decision for dispute CAC-UDRP-100165

Case number	CAC-UDRP-100165
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Time of filing	2010-06-10 14:16:06
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Domain names	komercnibanka.biz
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Case administrator

Name	Tereza Bartošková (Case admin)
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Complainant

Organization	Komerční banka, a.s.
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Respondent

Name	Miroslav Kaiser
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has proved to own Czech trademarks containing the text “Komerční banka”, as follows:

- verbal trademark No. 292459 with priority right since 3 February 2006;
- verbal trademark No. 271935 with priority right since 2 August 2004;
- combined trademark No. 235180 with priority right since 20 June 2000.

The Complainant also owns the following internet domains containing the denomination Komerční banka : komercni-banka.cz, komercnibanka.eu, komercni-banka.eu, komercni-banka.info, komercni-banka.mobi, komerčnibanka.eu, komerční-banka.eu and komerčnibanka.eu.

FACTUAL BACKGROUND

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

I.

Komerční banka, a.s., with its registered office at Na Příkopě 33/ 969, Prague 1, Czech Republic (hereinafter the “Complainant”) is a universal bank providing wide range of services in the area of individual, corporate and investment banking and has performed its activities in the territory of the Czech Republic for almost 20 years. Komerční banka, a.s. is one of the leading bank institutions in the Czech Republic, with almost 1.63 million clients. Since 2001, the Complainant is a member of the Société Générale group, one of the largest financial groups operating in Europe with almost 151 thousand employees worldwide.

II.

Pursuant to the records contained in the Commercial Register, the text “Komerční banka” has been the stem of the Complainant’s business name since 1992.

The Complainant is the owner of several national trademarks containing the text “Komerční banka” and registered with the Intellectual Property Office of the Czech Republic, namely:

- verbal trademark No. 292459 with priority right since 3 February 2006;
- verbal trademark No. 271935 with priority right since 2 August 2004;
- combined trademark No. 235180 with priority right since 20 June 2000.

The Complainant has also had the following internet domains containing the denomination Komerční banka registered in its name: komercni-banka.cz, komercnibanka.eu, komercni-banka.eu, komercni-banka.info, komercni-banka.mobi, komerčnibanka.eu, komerční-banka.eu and komerčnibanka.eu.

The Complainant submits the following evidence to prove the above-mentioned facts:

- official English translation of an extract from the Commercial Register kept by the Municipal Court in Prague, Section B, Inset 1360, of 26 March 2010;
- official English translation of the extract from the Registry of Trademarks kept by the Intellectual Property Office of the Czech Republic, Registration No. 292459, of 25 March 2010;
- official English translation of the extract from the Registry of Trademarks kept by the Intellectual Property Office of the Czech Republic, Registration No. 271935, of 25 March 2010;
- official English translation of the extract from the Registry of Trademarks kept by the Intellectual Property Office of the Czech Republic, Registration No. 235180, of 25 March 2010.

III.

Mr. Miroslav Kaiser, residing at Vilová ulička 15, Ústí nad Labem (hereinafter the “Respondent”) has had the internet domain komercnibanka.biz registered in his name, with effect as of 13 October 2008.

By the registration of the domain komercnibanka.biz, whose wording is confusable with, if not identical to the Complainant’s trademarks specified in paragraph II, as well as the stem of his business name, the Respondent substantially infringed the Complainant’s right to the wording of the registered business name and the rights following from the above-specified trademarks.

The Complainant submits the following evidence to prove the above-mentioned facts:

- Extract from the Registry of Domain Names (WHOIS) related to the domain komercnibanka.biz

IV.

The Complainant emphasizes that he has never granted any license or any other consent to the Respondent authorizing him to use the Complainant’s trademarks.

The Complainant (Respondent – trans.) also lacks any legal title authorizing him to register any domain containing the denomination "komercnibanka". This allegation is documented, inter alia, by the fact that the Respondent uses the internet domain concerned for publication of articles whose content is aimed against Komerční banka a.s. (this fact is described in more detail in paragraph VI hereof) and it is thus more than apparent that the Respondent is well aware of the existence of the undisputed rights of the Complainant to the designation "Komerční banka".

V.

On 27 October 2009, with the aim to reach an amicable resolution of the dispute, the Complainant requested in writing that the Respondent refrain from infringement of the legally protected rights of Komerční banka, a.s., as specified in paragraph II hereof.

The request having no effect, the Complainant sent to the Respondent a written offer, dated 25 November 2009, for purchase of the domain concerned for a price in the amount of CZK 150,000.00.

The Respondent responded to the offer through his e-mail of 7 January 2010, where he stated, inter alia, the following (citation): "I appreciate your offer for purchase of the domain for the price in the amount of CZK 150,000 including VAT; however, my estimate of the price of the domain is higher and, therefore, I do not accept your offer for the time being."

Having regard to the above-mentioned statement of the Respondent, the Complainant increased the offered price to CZK 180,000; the Respondent subsequently responded to the offer through his e-mail of 30 January 2010, where he stated the following (citation): "the amount offered by you is far below the market price of the domain www.komercnibanka.biz, which fact has been confirmed with other potential parties interested in purchase of the domain, with which we currently negotiate".

The above Respondent's statement clearly indicates that he has registered the domain with the primary aim of its subsequent sale, which is a manifestation of a "domain speculation" and a prima facie evidence of his mala fide (bad faith).

The Complainant submits the following documents, including English translation thereof, to prove the above-mentioned facts:

- request for refraining from infringement of legally protected rights of Komerční banka, a.s., of 27 October 2009;
- proposal for purchase of the domain komercnibanka.biz dated 25 November 2009;
- Respondent's response to the offer for purchase of the domain, dated 25 November 2009; increased purchase offer ;
- Respondent's response to the increased offer for purchase of the domain.

VI.

The Respondent's bad faith in registration of the internet domain concerned also follows from the manner of use of the domain by the Respondent since its establishment. Under the internet link komercnibanka.biz, the Respondent publishes propagandist defaming articles, where he alleges, inter alia, that the Complainant knowingly infringes copyright, commits purposeful and planned frauds, breaches bank secrets, etc. The conclusions presented by the Respondent are based on absolutely incorrect facts, their sole aim being the Respondent's evident attempt to jeopardize the Complainant's goodwill and to dissuade the potential, or the current, clients of the Complainant from further cooperation with him. This willful attempt to harm the Complainant follows from alleged monetary claims for indemnification due to Formtech CZ, a.s. (currently subject to bankruptcy proceedings), in which the Respondent discharges the office of statutory body. The alleged claims, whose existence the Complainant denies, have never been enforced before courts or other similar authorities.

The Complainant submits the following documents, including English translation thereof, to prove the above-mentioned facts:

- screenshot of the website komercnibanka.biz of 9 April 2010 (the article QUESTIONABLE CASES HIDDEN IN THE ARCHIVES OF KOMERČNÍ BANKA);

- screenshot of the website komercnibanka.biz of 9 April 2010 (the article MONEYS DISAPPEARING FROM THE BANK CLIENTS' ACCOUNTS);
- screenshot of the website komercnibanka.biz of 9 April 2010 (the article COOPERATING WITH KB MAY BE VERY DISADVANTAGEOUS, OR EVEN DANGEROUS FOR COMPANIES);
- screenshot of the website komercnibanka.biz of 9 April 2010 (the article DOES KB KEEP YOUR PERSONAL DATA SAFE?);
- screenshot of the website komercnibanka.biz of 9 April 2010 (the article KOMERČNÍ BANKA COMMITS PURPOSEFUL AND PLANNED FRAUDS; AVOID THE BANK);
- screenshot of the website komercnibanka.biz of 9 April 2010 (the article AVOID PAYMENT OF EXCESSIVE FEES).

VII.

Having regard to the facts mentioned in paragraphs I. to VI. hereof, the Complainant believes that all the conditions set out in Article 4 (a) of Uniform Domain Name Dispute Resolution Policy entitling the Complainant to request that the internet domain komercnibanka.biz be transferred into the ownership of Komerční banka, a.s. have been fulfilled.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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. Rights (paragraph 4(a)(i)of the Policy)

The Panel finds that the domain name KOMERCNIBANKA.BIZ is at least identical to Czech registration No. 292459 for the verbal mark KOMERCNI BANKA, with priority right since 3 February 2006.

2. Absence of Rights or Legitimate Interests (paragraph 4(a)(ii)of the Policy).

The Complainant contends that the Respondent is not an authorized licensor of the Complainant, nor received any other consent to the use of the name/trademark "Komerční banka" or similar names. Therefore the Respondent lacks any right or legitimate interest in using the domain name at issue. The fact that the disputed domain name is used for publishing articles against Komerční banka a.s. does not confer to the Respondent any legitimate right or interest in the the domain name.

3. Bad Faith (paragraph 4(a)(iii)of the Policy)

The Panel finds that the Complainant has successfully proved that the Respondent registered the domain name for speculation purposes. The domain name is used to access a website where the Respondent publishes propagandist defaming articles against the Complainant. In particular, the Respondent states that the Complainant knowingly infringes copyright, commits purposeful and planned frauds, breaches bank secrets, etc.

According to the Complainant, the Respondent's statements are ungrounded and their aim is to jeopardize the Complainant's goodwill and to dissuade the potential, or the current, clients of the Complainant from further cooperation with him. In the Complainant's belief, this willful attempt to harm the Complainant follows from alleged monetary claims for indemnification due to Formtech CZ, a.s. (currently subject to bankruptcy proceedings), in which the Respondent discharges the office of statutory body. The alleged claims, whose existence the Complainant denies, have never been enforced before courts or other similar authorities.

As the Respondent failed to object to the above-mentioned Complainant's allegations, the Panel concludes that the aforementioned assertions are true.

Moreover, the Panel finds that the Complainant has proved that the Respondent registered the domain name for selling it for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name. The Complainant supplied evidence showing that the Respondent refused to transfer the challenged domain name for the amount of 15,000.00 CZK,, because his "estimate of the price is higher". The Complainant, in order to settle this matter short of litigation, increased its initial offer to 18,000.00 CZK. The Respondent also refused to accept this second offer on the grounds that 18,000.00 CZK is far below the market price of the domain name, which is also confirmed by other potential parties' interest in acquiring ownership on the domain name, with which the Respondent was at that time negotiating.

Under the Policy, subordinating the transfer of a domain name infringing a third party's well-known earlier right to the payment of an amount higher than the out-of-pocket costs directly related to the domain name is evidence of bad faith. With his behaviour, the Respondent is clearly trying to obtain the higher possible amount for the domain name he illegitimately registered, which entails, under the circumstances, that the Respondent registered and maintained the domain name in bad faith

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **KOMERCNIBANKA.BIZ**: Transferred

PANELLISTS

Name	Angelica Lodigiani
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DATE OF PANEL DECISION	2010-07-27
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Publish the Decision
