

Decision for dispute CAC-UDRP-104524

Case number	CAC-UDRP-104524
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Time of filing	2022-04-25 09:57:24
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Domain names	adecony.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Adecco Group AG
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Complainant representative

Organization	BRANDIT GmbH
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Respondent

Name	Lawal Ibrahim
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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 is owner of various registered trademarks, all of them characterised by the presence of the distinctive term "ADECCO", including:

- Swiss trademark No. P-431224, registered since 26 September 1996, in classes 35, 41 and 42;
- Swiss trademark No. 549358, registered since 18 August 2006, in classes 9, 35, 36, 41 and 42;
- European Union trademark No. 3330149, registered since 19 January 2005, in classes 35, 41 and 42;
- International trademark No. 666347, registered since 17 October 1996, in classes 35, 41 and 42;
- International trademark No. 901755, registered since 18 August 2006, in classes 9, 35, 36, 41 and 42;
- United States trademark No. 2209526, registered since 26 November 2019, in classes 35, 41 and 42;
- United States trademark No. 5922639, registered since 26 November 2019, in class 35.

The Complainant also owns multiple domain names, comprising the term "ADECCO", among which <adecco.com>, registered since 15 May 1995, <adecco.ch>, registered since 17 May 1996, <adecgroup.com>, registered since 21 June 2002, and <adeccousa.com>, registered since 2 October 2003. The Complainant uses these domain names to resolve to its official

websites promoting its products and services. The website associated with the domain name <adeccousa.com> is especially targeting customers in the United States.

Furthermore, the Complainant has been incorporated in Switzerland and operated worldwide under the company and trade name Adecco since 1997, and in the United States under the company and trade name Adecco USA since 2002.

The Complainant's above-mentioned rights are hereinafter collectively referred to as the ADECCO Trademark.

FACTUAL BACKGROUND

The Complainant is one of the world's largest workforce solutions company, based in Switzerland. It born from the merger of the Swiss company Adia (established in 1957) and the French company Ecco (established in 1964), effective as of 1 January 1997. The Complainant has 5,200 branches and 32,000 employees in over 60 countries and territories, including the United States. It offers flexible placement, permanent placement, outsourcing and managed services across all sectors. It places around 600,000 associates into roles daily, enabling flexibility and agility for its clients. In 2000 the Complainant acquired Olsten Staffing in the US, becoming the number one recruitment company in that country with revenues of EUR 11.6 billion. In 2010, after acquiring the MPS Group, the Complainant became the world leader in professional staffing. Since then, the Complainant has kept growing. Its revenue in 2020 was EUR 19,561 million and EUR 20,949 million in 2021.

The Complainant owns an extensive portfolio of trademarks, registered in several jurisdictions, and of domain names, comprising the distinctive term "ADECCO" (the ADECCO Trademark).

The disputed domain name was registered with privacy or proxy service on 31 October 2021, well after the registration of the Complainant's ADECCO Trademark, by Lawal Ibrahim, an individual residing in Nigeria.

The disputed domain name resolves to a website displaying the ADECCO Trademark, related to Complainant's products and services, and containing a form requiring Internet users to enter their personal data. MX records have also been set for the disputed domain name, which suggests that it may be actively used for e-mail purposes.

The Complainant sent a cease-and-desist letter and several reminders to the Respondent without obtaining any response.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its trademark, since it incorporates in its entirety the Complainant's registered and widely known ADECCO Trademark. The mere addition of a geographical term (i.e. the letters "NY", which refer to the city or state of New York) does not prevent a finding of confusing similarity to the Complainant's trademark.

The Complainant contends that the Respondent has nothing to do with the Complainant, nor has been licensed or authorised to register or use the disputed domain name. The disputed domain name does not correspond to the Respondent's name, nor is this latter commonly known by the disputed domain name or owns any corresponding registered trademarks. Both the structure of the disputed domain name and the content of the website associated with the disputed domain name falsely suggest affiliation with the Complainant.

Finally, the Complainant contends that, given the distinctiveness and reputation of the ADECCO Trademark, it is unlikely that the Respondent had no knowledge of the Complainant's mark when he had registered the disputed domain name confusingly similar to such mark. The content of the website associated with the disputed domain name and MX servers set for the disputed

domain name evidence that the Respondent registered and has used the disputed domain name having in mind the Complainant and the ADECCO Trademark, and with the clear intention to take advantage of the reputation of the same by creating a likelihood of confusion between such mark and the disputed domain name.

The Complainant, therefore, requests the transfer of the disputed domain name.

RESPONDENT:

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.

LANGUAGE OF THE PROCEEDING

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the parties, the language of the administrative proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Upon the CAC's request for registrar verification, the Registrar of the disputed domain name has confirmed that the language of the registration agreement is English.

Considered the above-mentioned provision of the Rules, the principle that the administrative proceeding shall be conducted with due expedition while ensuring that the parties are treated with equality, as well as the fact that the content of the website associated with the disputed domain name is in English, which evidences that the Respondent can understand the language of the Complaint and has been given a fair opportunity to present his case, the Panel determines that the language of the present administrative proceeding shall be English.

PRINCIPAL REASONS FOR THE DECISION

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (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 is being used by the Respondent in bad faith.

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has established that it has rights in the ADECCO Trademark since 1996.

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademarks and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognisable within the disputed domain name. While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognisable in the domain name, the domain name will normally be considered confusingly similar to that mark for the purposes of the first element of the Policy (see paragraph 1.7 of WIPO Overview 3.0).

UDRP panels have consistently found that the addition of letters or other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to the relevant trademark, recognisable within the disputed domain name, would not prevent a finding of confusing similarity under the first element (see paragraph 1.8 of WIPO Overview 3.0 and the decisions cited thereto).

The TLD is to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0 and the decisions cited thereto).

The disputed domain name consists of:

- the term "ADECCO"
- the letters "NY" (which are usually used as the abbreviation of the city or state of New York)
- the .COM TLD.

The addition of the non-distinctive and descriptive (geographic) letters "NY" neither effects the attractive power of the Complainant's ADECCO Trademark, nor is sufficient to prevent the finding of confusing similarity between the disputed domain name and such mark.

The content of the website associated with the domain name is usually disregarded by UDRP panels when assessing confusing similarity under the first element. In some instances, panels have however taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name (see paragraph 1.9 of WIPO Overview 3.0 and the decisions mentioned thereto).

In the dispute at hand, considered that the disputed domain name resolves to a website displaying the Complainant's ADECCO Trademark and related to the Complainant's products and services, it is clear that the Respondent had in his mind the Complainant, its activities and the ADECCO Trademark, and intended to create confusion with such mark by registering the disputed domain name.

Therefore, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's trademark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that the complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the respondent (see paragraph 2.1 WIPO Overview 3.0: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.").

The disputed domain name was registered with privacy / proxy service. Upon the CAC's request for registrar verification, the Registrar disclosed the underlying registration data, identifying as registrant Lawal Ibrahim, an individual residing in Nigeria.

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's ADECCO Trademark or to register the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

UDRP panels have largely held that the composition of domain names consisting of a trademark plus an additional term (e.g., geographic) cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see paragraph 2.5.1 of WIPO Overview 3.0).

The disputed domain name, confusingly similar to the Complainant's ADECCO Trademark, since it incorporates such mark in its entirety by merely adding the letters "NY", carries a high risk of implied affiliation. The Complainant has indeed submitted the results of a Google search carried out regarding the terms "ADECCO" and "ADECCO NY", all of them related to the Complainant.

Furthermore, the disputed domain name resolves to an active website related to the Complainant and its products and services. First of all, it displays the Complainant's ADECCO Trademark. Secondly, right from the first few lines ("Welcome to Adecco Yes, this is the "about us" page. But this is really all about you. If you're looking for a job—a great job—we can help you get in the door at some incredible companies. Need to hire good people? We know thousands. Let us introduce you. No matter where you are, we can help you get where you want to go in your career.") the Internet users might believe that the disputed domain name is of the Complainant or affiliated with the Complainant. Finally, it contains a form requiring Internet users to enter their personal data and, therefore, it is likely used to mislead Internet users and involve them in a fraud scheme (phishing).

Moreover, MX records have also been set for the disputed domain name, which enables it to be used for sending e-mails impersonating the Complainant.

Therefore, the Panel finds that the use of the disputed domain name by the Respondent is clearly not a bona fide offering of goods or services or legitimate noncommercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's mark under the Policy.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the disputed domain name.

The Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. REGISTRATION AND USE IN BAD FAITH

The disputed domain name has been registered and is being used in bad faith for the following cumulative reasons.

The Respondent has used a privacy or proxy service when registering the disputed domain name. Although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact a panel's assessment of bad faith (see paragraph 3.6 of WIPO Overview 3.0).

The Respondent has registered the disputed domain name which is to be considered confusingly similar to Complainant's ADECCO Trademark, since it incorporates such mark in its entirety and differs from it merely by adding the non-distinctive and descriptive (geographic) letters "NY" (which are usually used as abbreviation of the city or state of New York), and the TLD .COM (which is disregarded for the purpose of determination of confusing similarity between the disputed domain name and the trademarks of the Complainant as it is a technical requirement of registration).

Given the distinctiveness and reputation of the Complainant's prior mark, it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant's rights in such well-known mark and the intention to exploit such reputation by diverting traffic away from the Complainant's website.

The disputed domain name resolves to a website, displaying the Complainant's ADECCO Trademark and related to the Complainant's products and services. This clearly evidences the Respondent has targeted the Complainant and its trademark through the disputed domain name by impersonating or falsely suggesting sponsorship or endorsement by the Complainant.

Moreover, the disputed domain name has MX servers configured. Configuring e-mail servers on the disputed domain name that confuses people into thinking it belongs to the Complainant might be part of a fraudulent scheme (phishing), such as to obtain sensitive or confidential personal information, or to solicit payment of fraudulent invoices. Therefore, it is implausible that there is any good faith use to which the disputed domain name might be used.

To the contrary, the Respondent's conduct makes it clear that he has registered and has been using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to his website or other on-line location, by creating a likelihood of confusion with the Complainant's ADECCO Trademark as to the source, sponsorship, affiliation, or endorsement of his website or location or of a product or service on his website or location (paragraph 4(b)(iv) of the Policy).

Finally, having:

- registered the disputed domain name, which is confusingly similar to and, thus, infringing the Complainant's prior mark
- used it to resolve to website, which falsely suggests affiliation with the Complainant
- configured MX servers for the disputed domain name, which enables it to be actively used for unlawful purposes,

the Respondent has also violated the paragraph 2 of Policy ("By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights").

Taken into account all circumstances of this case, it is implausible that there is any legitimate purpose in the registration and use of the disputed domain name by the Respondent.

The Respondent has neither replied to the Complainant's cease and desist letter, nor submitted a Response in this administrative proceeding to provide any evidence of actual or contemplated good faith use.

Therefore, the Panel finds that the Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (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. **ADECCONY.COM**: Transferred

PANELLISTS

Name	Avv. Ivett Paulovics
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DATE OF PANEL DECISION	2022-05-30
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Publish the Decision
