

Decision for dispute CAC-UDRP-104267

Case number	CAC-UDRP-104267
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Time of filing	2022-01-20 14:08:10
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Domain names	SBERDEVICES.ORG
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Sberbank of Russia
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Respondent

Name	Oleg Ermakov
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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

Complainant is the owner of the following trademark registrations:

- Russian trademark reg. № 793640 SBER DEVICES, date of registration 01.22.2021, priority date 08.15.2020, for products/services in classes 7, 9, 28, 35, 36, 37, 38, 41 and 42;
- Russian trademark reg. № 793641 date of registration 01.22.2021, priority date 01.22.2020, for products/services in classes 7, 9, 28, 35, 36, 37, 38, 41 and 42;
- Russian trademark reg. № 783919 date of registration 11.16.2020, priority date 08.13.2020, for products/services in classes 7, 9, 28, 35, 36, 37, 38, 41 and 42;
- International trademark № 1355502 SBER, date of the registration 09.02.2017 (countries: AT, BA, BY, CH, CN, CY, CZ, DE, HR, KZ, RS, SI, SK, UA, GB, IN, TR, US) for products/services in classes 9, 35, 36, 38, 39, 42 and 45.
- Russian trademark reg. № 623735 SBER, date of the registration 13.07.2017, date of priority: 06.09.2016, for products/services in classes 9, 35, 36, 38, 39, 42 and 45.
- Russian trademark reg. № 433395 СБЕР (in Latin transliteration – SBER), date of the registration 24.03.2011, date of priority 26.07.2010, for products/services in classes 01, 02, 03, 04, 05, 06, 07, 08, 09, 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, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

FACTUAL BACKGROUND

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

This Complaint is based on the following grounds:

A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

The domain name «sberdevices.org» includes the identical word trademark "SberDevices" (Certificate № 783919, Certificate № 793641, Certificate № 793640) and also is confusingly similar to the trademark «SBER» (Certificate № 623735, Certificate № 1355502), to the trademark «СБЕР» («SBER» in Latin transliteration, Certificate № 433395).

Confusing similarity between the domain name «sberdevices.org» and Sberbank's trademarks is confirmed by sound (phonetic) similarity in connection with the inclusion of the identical element «SberDevices» in the disputed domain name.

Moreover, between the domain name «sberdevices.org» and Sberbank's family of trademarks «SBER» there is a semantic similarity in connection with the inclusion of element «SBER» entirely into the domain name «sberdevices.org».

B. The Respondent has no rights or legitimate interests in respect of the domain name;

(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

The Respondent doesn't have any legal rights and real interests concerning the domain name «sberdevices.org». According to the information in the WHOIS database the Registrant Organization indicated as Endurance International Group, Inc. This is a special privacy/proxy registration service that makes the Complainant unable to contact administrator of the domain name directly and send the cease and desist letter.

During the period of September – November 2021 the Complainant repeatedly sent the pre-trial claim requesting Endurance International Group, Inc. to stop the infringement of exclusive rights of the Bank. Pre-trial claim has been also sent to the e-mail «legal@fastdomain.com» and also to the postal address 10 Corporate Drive Burlington, MA 01803, Massachusetts USA.

The Complainant received response by e-mail «noreply@salesforce.com; от имени; legal@fastdomain.com» saying the following: «Complaints about the issue of ownership or wording of a domain name (as opposed to the content hosted on the associated website) need to be taken up with the domain name owner directly, or should be arbitrated in compliance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "UDRP") or, through a court proceeding against the registrant. Our internal policies, as well as ICANN regulations, prevent us from acting as the arbiter of domain name disputes».

No concrete data about the administrator/registrant of the disputed domain name was provided.

The Respondent has no relation to the business activities of the Complainant and didn't receive any written consent from Sberbank to use on the Internet, including the domain name, the designations identical and/or confusingly similar to Sberbank's family of trademarks. Sberbank of Russia is one of the largest banks in Russia and Europe, has its representative offices and subsidiaries in many foreign countries, in particular, besides the CIS countries, Sberbank is represented in several countries of the Central and Eastern Europe, and also in China, India and Turkey. Moreover, Sberbank operates in many other countries. In Russia Sberbank has more than 110 million customers. Under the company name and firm designation in which the word "Sberbank" is used, the Complainant carries out his activity since 1991. Since that moment according to the constituent

documents Sberbank operates under the following firm name: Public joint-stock company "Sberbank of Russia" (abbreviated company: PJSC Sberbank). In English: Sberbank of Russia (Sberbank). The word "sberbank" is also used in the domain name of the Sberbank' web site (www.sberbank.ru).

In the absence of Respondent's right such administration of the domain name «sberdevices.org» contradicts the provisions of the article 16 of the TRIPS Agreement. In accordance with article 16 of the Agreement on trade-related aspects of intellectual property rights (Marrakech, 15 April 1994, further referred as the "TRIPS Agreement"), the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion.

Such unfair use of the trademarks in the absence of permission of the right holder is recognized as the infringement of exclusive rights of the Complainant.

C. The disputed domain name was registered and is being used in bad faith.

(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

The domain name «sberdevices.org» is used by Respondent illegally.

Moreover, the use of the Respondent in the domain name the designation similar to the Sberbank's trademarks represent the act of unfair competition as they create obstacles to the Complainant to use in the Internet the information about Sberbank and its products and services with the use of trademarks "Sberbank " in the domain zone .org, including in the sberdevices.org domain. Such actions also create infringement of trademark rights registered under the certificates with Russian national protection (trademarks No. No. 793640, 793641, 783919, 623735, 433395) and international protection (trademark No.1355502).

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

I. RIGHTS

The disputed domain name is identical or confusingly similar to the Complainant's registered trademarks since it reproduces the

Complainant's mark 'SBER DEVICES'.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the domain name in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D20020856:

"As mentioned [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed domain name, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists." WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

Furthermore, apparently the Complainant sent C&D letters to the Responded and failed to respond. It seems difficult for the Respondent to have rights or legitimate interests in a name that is the same as a trademark of a well-known bank.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

III. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant's allegations and evidence with regard to the Respondent's registration and use of the disputed domain name in bad faith.

The Complainant has filed evidence of the well-known character of the Sber bank and its SBER DEVICES trademark. Therefore, there is no other plausible explanation for the registration of the domain name by the Respondent than an intention to impersonate the Complainant.

Despite the time elapsed since the registration of the domain name in dispute, apparently it does not have any content.

Another circumstance to be noted is that the registrant used the services of a privacy and proxy registration service.

According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), factors that have been considered relevant in finding bad faith in the passive holding include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

Considering all the circumstances of the case, the only plausible explanation is that the Respondent registered the disputed domain name in order to impersonate the Complainant.

It has, therefore, been satisfactorily demonstrated to the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SBERDEVICES.ORG:** Transferred

PANELLISTS

Name	José Ignacio San Martín
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DATE OF PANEL DECISION	2022-02-17
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Publish the Decision
