

Decision for dispute CAC-UDRP-104778

Case number	CAC-UDRP-104778
Time of filing	2022-08-10 09:34:35
Domain names	IINTESSASANPAOLO.COM

Case administrator

Name	Iveta Špiclová (Case admin)
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Complainant

Organization	Intesa Sanpaolo S.p.A.
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Complainant representative

Organization	Intesa Sanpaolo S.p.A.
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Respondent

Name	abuye dumedes
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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 the holder of various trademarks including the following:

- INTESA SANPAOLO, International trademark registration No. 920896 registered on March 7, 2007 and duly renewed, in classes 9, 16, 35, 36, 38, 41 and 42; and
- INTESA SANPAOLO, EU trademark registration No. 5301999 registered on June 18, 2007 and duly renewed, in classes 35, 36 and 38.

FACTUAL BACKGROUND

The Complainant is an Italian banking group resulting from the merger (effective as of January 1, 2007) between Banca Intesa S.p.A. and Sanpaolo IMI S.p.A.

The Complainant has a market capitalisation exceeding 35,6 billion euro and a network of approximately 3,700 branches in Italy. The Complainant also has a strong presence in Central-Eastern Europe with a network of approximately 1.000 branches and over 7,0 million customers. Moreover, the Complainant's international network specialised in supporting corporate customers is present in 25 countries, in particular in the Mediterranean area and those areas where Italian companies are most

active, such as the United States, Russia, China and India.

The Complainant is the owner of several word marks for INTESA SANPAOLO, registered in several classes and covering various countries, including in Türkiye where the Respondent is located. The Complainant also claims to be the owner of various domain names including <intesasanpaolo.com>, which resolves to the Complainant's official website <http://www.intesasanpaolo.com/>.

The disputed domain name <iintessasanpaolo.com> has been registered on April 25, 2022 by the Respondent. According to evidence provided by the Complainant, the disputed domain name does not resolve to any active website but instead resolves to a page mentioning that the website is blocked by Google Safe Browsing because of suspected phishing activity.

On June 6, 2022, the Complainant's attorneys sent a cease-and-desist letter to the Respondent asking for the voluntary transfer of the disputed domain name. The Complainant indicates that the Respondent did not comply with the above request.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT: The Complainant considers the disputed domain name to be identical or at least confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent has not been authorized to register or use the disputed domain name. Also, according to the Complainant, the Respondent's name does not correspond to the disputed domain name and to the best of the Complainant's knowledge, the Respondent is not commonly known by the disputed domain name. The Complainant did not find any fair or non-commercial uses of the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks. According to the Complainant, there are circumstances indicating that by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site. The Complainant further contends that the main purpose of the Respondent was to use the above website for "phishing" financial information in an attempt to defraud the Complainant's customers, and that in any event, there is no conceivable legitimate use that could be made of the disputed domain name by the Respondent.

RESPONDENT: The Respondent did not reply to the Complainant's contentions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the complainant to make out its case, and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. The standard of proof is the balance of probabilities.

Thus, for the complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Confusing similarity of the disputed domain name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of registered INTESA SANPAOLO trademarks, which is used in connection with the Complainant's business, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name <iintessasanpaolo.com> appears to be an obvious misspelling of the Complainant's trademark by the addition of two letters: "i" and "s". The Panel finds that this can be considered as typosquatting. In the Panel's view, the addition of another "i" and another "s" does not prevent the disputed domain name from being confusingly similar to the Complainant's trademark (see section 1.9 of the WIPO Overview 3.0, CAC Case No. 104590, BOLLORE SE v. shem gitahi).

It is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

For these reasons, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling* (45FHH), WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "abuye dumedes". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. In this

case, the Panel finds that the disputed domain name can be considered as virtually identical to the Complainant's INTESA SANPAOLO trademark as it simply adds two letters identical to the respective letters next to these, resulting in a high risk of implied affiliation.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. In fact, the Respondent is not making any use of the disputed domain name in connection with an active website. According to the Complainant's evidence, the website linked to the disputed domain name has been blocked by Google Safe Browsing because of suspected phishing activity. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see section 2.13 of the WIPO Overview 3.0).

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds that the Complainant has established a *prima facie* case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (See e.g. *Telstra Corporation Limited v. Nuclear Marshmallow*, WIPO Case No. D2000-0003; *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see *Red Bull GmbH v. Credit du Léman SA*, Jean-Denis Deletraz, WIPO Case No. D2011-2209; *Nintendo of America Inc v. Marco Beijen*, Beijen Consulting, *Pokemon Fan Clubs Org.*, and *Pokemon Fans Unite*, WIPO Case No. D2001-1070). In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the INTESA SANPAOLO trademark at the moment it registered the disputed domain name, since the disputed domain name is almost identical to the Complainant's distinctive INTESA SANPAOLO trademark except for the addition of two letters. Also, the Complainant's INTESA SANPAOLO trademark was registered in Türkiye, where the Respondent is located, more than 10 years before the registration of the disputed domain name.

UDRP panels have found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark:

- seeking to cause confusion for the respondent's commercial benefit, even if unsuccessful;
- the lack of a respondent's own rights to or legitimate interests in a domain name;
- absence of any conceivable good faith use.

Given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith (see section 3.1.4 WIPO Overview 3.0).

In the present case, the Panel finds that the very nature of the disputed domain name suggests an intention to cause confusion. The disputed domain name is almost identical to the Complainant's distinctive trademark due to typosquatting. The uncontested lack of the Respondent's own rights to or legitimate interests in the disputed domain name has already been mentioned above. Finally, given the distinctive character of the Complainant's mark, the Panel finds it difficult to conceive any plausible good faith use of the disputed domain name by the Respondent in the future.

The Complainant provides evidence showing that the website linked to the disputed domain name has been blocked by Google Safe Browsing because of suspected phishing activity. The Panel finds that this is a further indication of bad faith.

Finally, the Respondent did not respond to the Complainant’s cease-and-desist letter and did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent’s bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being 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. IINTESSASANPAOLO.COM: Transferred

PANELLISTS

Name	Flip Petillion
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DATE OF PANEL DECISION 2022-09-19

Publish the Decision