

Decision for dispute CAC-UDRP-105217

Case number	CAC-UDRP-105217
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Time of filing	2023-02-21 14:10:18
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Domain names	wildones.com
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Case administrator

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

Name	Ing. Samuel Sidor
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Respondent

Organization	Domain Admin (Blyther Investments Limited)
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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 appears to be the registered proprietor of Czech national trademark registration No. 395623 WILD ONES, filed on November 2, 2022 and registered on February 8, 2023 for various goods and services of classes 09, 41 and 42. The Complainant also claims to be the owner of a US Application for the same trademark.

FACTUAL BACKGROUND

The Complainant is the proprietor of the Czech national trademark WILD ONES, filed on November 2, 2022 and registered on February 8, 2023 for various goods and services, and is seeking the transfer of the disputed domain name <WILDONES.COM>, registered on September 29, 1998.

PARTIES CONTENTIONS

COMPLAINANT'S CONTENTIONS:

The Complainant argues that the disputed domain name <WILDONES.COM>, registered on September 29, 1998, is identical to the Czech national trademark registration No. 395623 WILD ONES, filed on November 2, 2022. The Complainant also claims to have filed a US trademark application for the same name. The Complainant further argues that the Respondent has no rights in the disputed domain name claiming that this is a case of domain parking, an inactive website and non-use, respectively passive holding. The Complainant also puts forward that the disputed domain name was registered and is being used in bad faith as this case concerns speculation in domain names, holding domain names for sale and offering them to the public and financial gain being the primary purpose of the registration.

The Complainant puts forward that the disputed domain name has been put to auction several times but that the auction has been closed in each case without a sale taking place, meaning that the Respondent is seeking to obtain a certain price for the disputed domain name. The Complainant also states that the domain name was not connected to any meaningful content as illustrated by using

an example from 2011.

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 not, 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

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The Complaint has established rights in the name WILD ONES. The disputed domain name <WILDONES.COM> is found to be confusingly similar to the Complainant's registered trademark. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of

a) disregarding the top-level suffix in the domain name (i.e. ".com"), and

b) finding that the deletion of an empty space between the words "WILD" and "ONES", which is present in a trademark, from a disputed domain name (which could be owed to the nature of the spelling of domain names) would not be considered sufficient to distinguish such a domain name from the trademark in question.

The disputed domain name <WILDONES.COM> is therefore confusingly similar to the earlier right in the name "WILD ONES" and the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Respondent does not appear to be commonly known by the disputed domain name. The Respondent is in no way related to the Complainant. The Respondent has not been granted an authorization or license to use the disputed domain name by the Complainant. The Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

In summary, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy) and that the Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel has examined the evidence and finds that the Complainant has not established that the disputed domain name was registered by the Respondent or is being used by the Respondent in bad faith.

While the Complainant has put forward that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name, the Complainant has relied on evidence from the year 2011 in order to attempt to make a case. If it is true that the domain name has not been used since, then the Complainant is correct in stating that no bona fide use appears to be being made of the disputed domain name at the moment. However, this is not evidence that such use has never taken place.

More importantly however, the use cited by the Respondent predates the filing of the Czech national trademark on which the applicant relies by eleven years. The registration of the disputed domain name (1998) predates the filing of that Czech trademark registration (2022) by 24 years.

The Panel notes that the Complainant provided no evidence of the filing of the US trademark application cited in the Complaint, nor could such evidence be found. At the time of the registration of the disputed domain name, the Respondent could not have known of the existence of the rights of the Complainant.

Knowledge of such a right cannot even be assumed more recently. The Complainant has in no way supported a claim that the Respondent knows or should have known of the trademark registration. This is a national trademark registration which does not appear to have been widely used or advertised, meaning that the mark does not appear to be in any way well known either in the Czech Republic or elsewhere.

The words “wild things” are common words of the English language. Therefore, the Respondent did not have to make any connection to a trademark or other potentially protected right when registering or using the disputed domain name nor can it be assumed that this was the case.

Although panels have held that in the past that a domain name registered earlier than a trademark could have been registered in bad faith, these are findings where exceptional circumstances have surrounded the filing of the domain names or where the domain name in question was transferred to the Respondent after the creation of the earlier right on which the Complaint relies.

Neither can be inferred from the evidence provided by the Complainant. On the contrary, the disputed domain name was filed more than twenty years before the trademark and there is no evidence of recent transfers of the disputed domain name to a new owner. The registration cannot be held to have taken place in bad faith.

There appears to be no evidence showing attempts being made on the part of the Respondent to use the Complainant's trademark to target consumers or to otherwise appropriate the rights of the Complainant.

The mere fact that the Respondent is attempting to obtain a commercially acceptable price when selling the disputed domain name is not by and of itself evidence of bad faith. Domain names are commercial assets which may be traded if they do not infringe upon the rights of third parties. The Complainant provided no evidence of a commercially unreasonable or exaggerated price being asked, simply stating that the “owner is holding it in [the] hope somebody will pay him a lot of money”. This is not an unreasonable approach and is not held to be an act of bad faith by and of itself. The Complainant did not for example show a history of such actions on the part of the Respondent or of a series of common language words being registered as domain names for the purposes of selling such domain names for unreasonably high asking prices.

Therefore, the Panel concludes that the Respondent has neither registered nor is he using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore failed to satisfy the requirement under paragraph 4(a) (iii) of the Policy.

Rejected

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

- 1. **wildones.com**: Remaining with the Respondent

PANELLISTS

Name	Udo Pflleghar
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DATE OF PANEL DECISION	2023-03-30
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Publish the Decision