

Decision for dispute CAC-UDRP-105911

Case number	CAC-UDRP-105911
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Time of filing	2023-10-26 09:22:34
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Domain names	jcdaceux.com
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Case administrator

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

Organization	JCDECAUX SE
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	Strategic Sourcing Inc.
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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 International Registered Trademark no. 803987 for the word mark JCDECAUX, registered on November 27, 2001 in Classes 6, 9, 11, 19, 20, 35, 37, 38, 39, 41 and 42, designated in respect of some 14 territories.

FACTUAL BACKGROUND

Founded in 1964, the Complainant specializes in street furniture, transport advertising and billboard advertising. The Complainant operates in approximately 80 countries and 3,573 cities, and is the only group present in all three principal segments of the outdoor advertising market. The Complainant has more than one million advertising panels in airports, railway or metro stations, shopping centres, on billboards and on street furniture. It is listed on the Premier Marché of the Euronext Paris stock exchange, is part of Euronext 100 index, employs over 11,000 people, and generated revenues of over EUR 3.3 billion in 2021. The Complainant operates under the mark JCDECAUX.

In addition to the Complainant's JCDECAUX registered trademark, the Complainant owns a domain name portfolio containing domain names including the same distinctive JCDECAUX wording, such as <jcdecaux.com> (created on June 23, 1997).

The disputed domain name was registered on October 20, 2023. The website associated with it resolves to a parking page containing commercial links. The DNS configuration for the disputed domain name includes MX records, indicating that it is capable of receiving e-

mail.

PARTIES CONTENTIONS

Complainant:

The disputed domain name is confusingly similar to the Complainant's JCDECAUX trademark. Previous panels under the Policy have confirmed the Complainant's rights in its trademark. The misspelling in the disputed domain name, which reverses the letters "e" and "a" in the Complainant's mark, is insufficient to escape such a finding. The disputed domain name contains an obvious misspelling of the Complainant's trademark and constitutes typosquatting. Slight spelling variations between a domain name and trademark do not prevent a finding of confusing similarity under the Policy. The applicable Top-Level Domain ("TLD") should be disregarded for comparison purposes.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not identified in the WHOIS database as the disputed domain name and thus is not known as the disputed domain name. The Respondent is not affiliated with or authorized by the Complainant in any way, is not related to the Complainant's business, and does not carry out any activity for or have any business with the Complainant. The Respondent has been granted no license or other authorization to make use of the Complainant's trademark or to apply for registration of the disputed domain name. The disputed domain name points to a parking page with commercial links, which according to previous panels under the Policy would not constitute a *bona fide* offering of goods or services.

The Complainant's trademark has been known for decades and was protected in several countries when the disputed domain name was registered. The Complainant does business in 80 countries and is listed on the Euronext Paris stock exchange. Previous panels under the Policy have held that the Complainant's JCDECAUX trademark is well-known. Given the distinctiveness of the mark and the extent of the Complainant's reputation, the Complainant states that the disputed domain name was registered in the full knowledge of the Complainant. The misspelling in the disputed domain name was intentionally designed to be confusingly similar to the Complainant's trademark. Previous panels under the Policy have seen such actions as evidence of bad faith. The disputed domain name points to a parking page with commercial links, indicating that the Respondent has attempted to attract Internet users for commercial gain to its own website due to the Complainant's trademark. This is also evidence of bad faith. Finally, the configuration of MX records suggests that the disputed domain name may be used actively for e-mail purposes. In a previous case with a similar factual background, it has been concluded that it would be inconceivable that a respondent would be able to make any good faith use of the corresponding domain name as part of an e-mail address.

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.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has demonstrated that it has UDRP-relevant rights in its JCDECAUX trademark by virtue of its corresponding trademark registration. The Second-Level Domain of the disputed domain name contains an obvious typographical variant of the said trademark in which the letters “a” and “e” have been interchanged. Such apparently intentional misspelling of a complainant’s mark is typically regarded as confusingly similar thereto on the basis that the domain name concerned contains sufficiently recognizable aspects of the relevant mark (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”). Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s JCDECAUX trademark.

The Complainant asserts that the Respondent lacks rights or legitimate interests in the disputed domain name, noting a lack of permission or authorization on the Complainant’s part that would entitle the Respondent to register or use the disputed domain name. The WHOIS record for the disputed domain name does not suggest that the Respondent is commonly known by the disputed domain name. The disputed domain name is engaged in commercial advertising use. This does not constitute a bona fide offering of goods or services due to the fact that the Respondent appears to have selected a deliberate misspelling of the Complainant’s mark in the disputed domain name in order to confuse Internet users, which confusion would maximize the number of clicks on the corresponding advertisements. The Complainant also notes that MX records have been configured in respect of the disputed domain name, indicating that it may be used for e-mail purposes, which would cause additional confusion.

Taking the Complainant’s assertions, evidence and observations together, the Panel finds that these are sufficient to constitute the requisite *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name (see, for example, section 2.1 of the WIPO Overview 3.0). The Respondent has not replied to the Complainant’s allegations and evidence in this case. There are no submissions or evidence on the record which might serve to rebut the Complainant’s *prima facie* case to any reasonable extent. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant’s mark is well-known, as discussed in previous cases under the Policy, and is of a long-established nature predating the registration of the disputed domain name by many decades. A deliberate misspelling of the Complainant’s mark has been chosen for the disputed domain name, meaning that the Respondent could not assert that it was unaware of the Complainant when it registered the disputed domain name and/or that the registration was merely coincidental. The Panel is therefore satisfied that the disputed domain name was registered in the knowledge of the Complainant’s mark and with intent to target the same.

The Panel is of the view, on the balance of probabilities, that the Respondent is taking advantage of the confusion generated by a typographical variant of the Complainant’s mark in the disputed domain name to maximize the traffic to the Respondent’s website in order to benefit from the corresponding advertising impressions. The use of such advertising links is indicative of registration and use in bad faith even if the Respondent has not directly published the links concerned, as the registrant of a domain name is generally deemed responsible for the content on the associated website. In terms of paragraph 4(b)(iv) of the Policy, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to source, sponsorship, affiliation, or endorsement of its website.

Furthermore, the presence of configured MX records within the DNS servers to which the disputed domain name is delegated suggests that the Respondent may be planning to use the disputed domain name for e-mail services. In this scenario, any e-mail sent using the disputed domain name would impersonate the Complainant, taking unfair advantage of the confusing misspelling of the Complainant’s mark, ultimately for the Respondent’s commercial benefit. Even if there is no direct evidence of such e-mail having been sent as yet, the continued registration of the disputed domain name constitutes a threat hanging over the Complainant of which the Complainant is reasonably apprehensive. The existence of such an ongoing threat is typically regarded as an indicator of bad faith under the Policy (see, for example, IP86, LLC v. Name Redacted, WIPO Case No. D2022-4896).

In all of these circumstances, the Panel considers that the Complainant has made out a sufficient case of registration and use in bad faith in respect of the disputed domain name. The Respondent has chosen not to file a Response in this case and has failed to address the Complainant’s allegations of bad faith registration and use. The Respondent has not sought to provide any explanation that might have suggested that its actions regarding the disputed domain name were in good faith, and the Panel can conceive of no reasonable explanation which the Respondent might have tendered in this particular case which would have suggested that the disputed domain name was registered and has been used in good faith.

In all of these circumstances, the Panel finds that the disputed domain name has been 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. **jcdaceux.com**: Transferred

PANELLISTS

Name **Andrew Lothian**

DATE OF PANEL DECISION 2023-11-22

Publish the Decision