

ADMINISTRATIVE PANEL DECISION

Akelius Residential Property AB v. Privacy Department, IceNetworks Ltd.
Case No. D2022-3275

1. The Parties

The Complainant is Akelius Residential Property AB, Sweden, represented by Ports Group AB, Sweden.

The Respondent is Privacy Department, IceNetworks Ltd., Iceland.

2. The Domain Name and Registrar

The disputed domain name <akeliusslumlord.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 2, 2022. On September 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 6, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 7, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on October 18, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is Akelius Residential Property AB, a limited liability company incorporated in Stockholm, Sweden. The Complainant states that it is a company in the real estate industry, specialized in renting apartments worldwide.

Among other registered trademarks, the Complainant is the owner of European Union Registered Trademark No. 004945457 for the word mark AKELIUS, registered on February 6, 2007, in Nice Class 36 (insurance, financial affairs, monetary affairs, and real estate affairs). The Complainant also operates a website at the domain name <akelius.com>.

According to Whois records, the disputed domain name was registered on May 20, 2022. Little is known regarding the person behind the registration of the disputed domain name. According to a screenshot of the associated website, the disputed domain name appears to forward to a page on the website of the Office of the United Nations High Commissioner for Human Rights. Said page consists of a press release dated April 29, 2020, entitled “Corporate landlord is abusing tenants’ human rights, says UN housing expert” which relates to an entity named “Akelius Residential AB”. The Complainant states in its submissions that the indicated entity is the Complainant. Said press release announces that “the UN Special Rapporteur on the right to housing” has said that “Multinational corporate property owner Akelius Residential AB is breaching human rights standards with its aggressive push for housing profits in countries around the world,” adding, “she had heard of many cases where Akelius utilises an aggressive business model which wreaks havoc with people’s lives and has told the company its operations in the UK, Canada and Germany are inconsistent with international human rights law on the right to adequate housing”.

The Complainant issued a cease and desist notice to the Respondent via its then registrar on August 3, 2022. On August 3, 2022, an unnamed person replied to said notice by way of a privacy-protected email service. Said reply stated that the writer had transferred the disputed domain name to another registrar, adding that “as you probably already know, trademark is not enforceable under UDRP when the intent is to criticize a company, which is obviously what this domain is for”. The writer also suggested that the Complainant’s representative’s plan was “to defend human rights abusers”, and copied beside such suggestion the URL to which the disputed domain name points.

5. Parties’ Contentions

A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The Complainant is the owner of a variety of AKELIUS registered trademarks which have been used since their registration, all of which predate the registration of the disputed domain name, together with the <akelius.com> domain name, registered on January 4, 1997. The disputed domain name substantially imitates the Complainant’s trademark with the only difference being the added ending “slum lord”. Such difference does not bring any considerable visual or conceptual change to the similarity. The addition of the descriptive term “slum lord” must be interpreted as an attempt of smearing the Complainant’s business and reputation, given that the term often is used as a slang term for a landlord who receives unusually large profits from substandard, poorly maintained properties. The addition of the generic Top-Level Domain (“gTLD”) “.com” is irrelevant for the assessment of confusing similarity and should be disregarded.

Rights or legitimate interests

The Respondent does not have any rights to the AKELIUS trademark, is not a licensee of the Complainant, and has received no permission from the Complainant to register its trademark as a domain name, nor is there any evidence that the Respondent has been commonly known by the disputed domain name. The Respondent has not used, or prepared to use, the disputed domain name in connection with a *bona fide* offering of goods and/or services or for any legitimate noncommercial or fair purpose. There is no evidence of any legitimate use of the disputed domain name for any activity or business related to the Complainant's trademark. The disputed domain name refers to an actual website and is linked to an article published on April 29, 2020, which refers to the Complainant as a company breaching human rights by its business. The Respondent answered the Complainant's cease-and-desist letter by referring to said article.

Registered and used in bad faith

The Complainant's trademarks were all registered well before the Respondent became the owner of the disputed domain name. The Complainant has been well exposed under the trademark, both through its own marketing channels, through its official website, and through affiliate partners. It is obvious that the Respondent was well aware of the Complainant's trademarks and business when registering and using the disputed domain name and this must be interpreted as an attempt to affect the public and to smear the Complainant's trademarks. The Respondent's motive in relation to registration and use of the confusingly similar disputed domain name was to attract website visitors in order to carry out a smear campaign against the Complainant, indicating that the registration and usage of the disputed domain name was done intentionally in order to disturb, hinder, and interrupt the business of the Complainant. It should also be noted that the Respondent used a privacy service provider to register the domain name, which also may constitute a factor indicating bad faith. The circumstances indicate that the Respondent registered the disputed domain name primarily for typosquatting and phishing, to commit fraudulent impersonation.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (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.

A. Identical or Confusingly Similar

The first element of the Policy is usually assessed in two steps. First, the Complainant must show that it has UDRP-relevant rights in a trademark. Secondly, the disputed domain name is compared to such trademark, typically in a straightforward side-by-side analysis in which the gTLD of the domain name concerned (in this case, ".com") is usually disregarded as required for technical reasons only. Confusing similarity may be found if the trademark is recognizable within the disputed domain name, whether or not accompanied by other terms.

In the present case, the Panel finds that the Complainant has UDRP-relevant rights in its AKELIUS registered trademark, as outlined in the factual background section above. Comparing such mark to the disputed domain name, the Panel notes that this term is incorporated in its entirety at the beginning of the Second-Level Domain thereof, coupled with the term “slumlord” (or possibly “slum lord” given that spaces cannot be reproduced in domain names for technical reasons). The fact that the Complainant’s mark is recognizable in the disputed domain name is sufficient for a finding of confusing similarity under the first element of the Policy, whether or not such mark is accompanied by other terms in the disputed domain name. For example, it is of no significance to the first element analysis whether the other term “slumlord” or “slum lord” may be regarded as negative or pejorative, as indicated by the Complainant (see the discussion in section 1.13 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

In all of the above circumstances, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights and therefore that the Complainant has carried its burden with regard to the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant’s case on the second element under the Policy effectively asserts that the Respondent would be unable to demonstrate rights or legitimate interests in terms of any of the provisions of paragraph 4(c) of the Policy. Meanwhile, the Respondent has maintained its silence in connection with the administrative proceeding. The Complainant submits in particular that the Respondent has not used the disputed domain name for any legitimate noncommercial or fair purpose. At the same time, the Complainant contends that the disputed domain name refers to an actual website and is linked to an article published on April 29, 2020, which refers to the Complainant as a company breaching human rights by way of its business methods. The Complainant adds that the Respondent answered the Complainant’s cease-and-desist letter by referring to said article. The answer to such letter, which the Panel presumes to emanate from the person behind the disputed domain name, expressly states that the person’s intent is to criticize the Complainant *via* the disputed domain name.

The use of a domain name for noncommercial free speech can in principle support a legitimate interest under the Policy (see section 2.6 of the [WIPO Overview 3.0](#)). To support such fair use, the respondent’s criticism must be genuine and noncommercial, and not a pretext for cybersquatting, commercial activity, or tarnishment. Where the domain name concerned is not identical to the complainant’s trademark but comprises the mark plus a derogatory term (e.g., “<trademarksucks.tld”) panels tend to find that the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site if such use is *prima facie* noncommercial, genuinely fair, and not misleading or false.

Panels may consider the disputed domain name itself, in the context of whether this carries a risk of implied affiliation, noting that certain critical terms (e.g., <trademarksucks.com>) tend to communicate, *prima facie* at least, that there is no such affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)). Furthermore, panels typically consider the circumstances beyond the disputed domain name, such as for example, any website content and any apparent commercial activities, in order to determine whether the disputed domain name has been registered and is being used for legitimate purposes and not as a pretext for commercial gain or other such purposes inhering to the respondent's benefit (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

In the present case, the analysis is relatively straightforward. The disputed domain name does not impersonate the Complainant by repeating the Complainant's trademark either on its own or in a way that might suggest sponsorship or endorsement by the Complainant. On the contrary, the disputed domain name couples the Complainant's trademark with the term "slumlord" or "slum lord", which the Complainant acknowledges to be a derogatory term, defining it as "a slang term for a landlord who receives unusually large profits from substandard, poorly maintained properties". In the Panel's opinion, such a term could only be seen as implicitly critical of the Complainant, given that the Complainant specializes in renting apartments and is apparently a landlord of some substance. Bearing in mind the admitted connotations, it is not a term that the Complainant would use to describe itself. *Prima facie*, therefore, the presence of this term within the disputed domain name communicates that there is likely to be no affiliation between the disputed domain name and the trademark owner, and Internet users viewing the disputed domain name would understand that it is not owned, sponsored, or endorsed by the Complainant.

Turning to the circumstances beyond the disputed domain name and the question of any commercial or noncommercial use, it appears that the associated website (being a third party site to which the disputed domain name points) contains a press release from a genuine and legitimate third party deploring certain alleged business practices of the Complainant, which are claimed to amount to a breach of human rights standards. The Complainant makes no suggestion that this website, or the Respondent's forwarding of the disputed domain name to such website, is a pretext for commercial gain or has been carried out for other purposes inhering to the Respondent's benefit.

The Panel did however identify a "Donate" button at the top left of the Complainant's screenshot of such website, which might have suggested the presence of commercial or noncommercial fundraising. The Complainant has chosen not to address the Panel on the nature or effect of this button. In the absence of any relevant submission from either of the Parties, the Panel presumes that the "Donate" facility references general donations which may be made to support the work of the third party, Office of the United Nations High Commissioner for Human Rights, and that it is thus incidental to the Respondent's main purpose of criticizing the Complainant. The Respondent does not seem to be attempting to profit from the Complainant's trademark or goodwill, and no benefit would appear to inure to it from any donations to the third party. Such incidental commercial activity has been found to be permissible in circumstances where, at least *prima facie*, the Respondent seems to be genuinely criticizing the Complainant (see, for example, *Royal Forex Ltd. v. Jose Luis Soriano*, WIPO Case No. [D2020-2316](#) and section 2.6.3 of the [WIPO Overview 3.0](#)). Furthermore, given its content and provenance, there could be no suggestion that the third party's website might be confused with an official site of the Complainant itself. Accordingly, in the circumstances of the present case, the Respondent's use of the disputed domain name to point to alleged human rights violations on the part of the Complainant strikes the Panel as noncommercial, genuinely fair, not misleading or false insofar as affiliation is concerned, and not a pretext for commercial gain.

While the Complainant asserts that the use of the disputed domain name constitutes an attempt to smear the Complainant's business and reputation, the Panel is not in any position to assess whether the terms of the press release on the website to which the disputed domain name points are accurate and reasonable on the one hand or false and merely part of a smear campaign on the other. In any event, the Panel does not require to make such an assessment in terms of its analysis under the Policy (see, for example, the comments of the panel in *MUFG Union Bank, N.A. v. William Bookout*, WIPO Case No. [DME2014-0008](#)). Furthermore, as the panel noted in *Britannia Building Society v. Britannia Fraud Prevention*, WIPO Case No. [D2001-0505](#), "Claims sounding in commercial libel must be brought in other legal venues."

In all of these circumstances, the Panel finds that the Complainant has failed to carry its burden in terms of the requirements of paragraph 4(a)(ii) of the Policy. The Complaint therefore fails.

C. Registered and Used in Bad Faith

Although the Complaint has failed on the second element analysis, the Panel will briefly review the case in terms of the third element for completeness. Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

In the present case, the third element assessment of the Policy mirrors that of the second element above. The Panel has found that the disputed domain name was registered to criticize the Complainant’s business practices and that the composition of the disputed domain name itself clearly signals to Internet users that they may expect to find critical material on the associated website. It does not impersonate the Complainant or create a risk of perceived affiliation.

The fact that the website itself is produced by a third party is of no significance, in the particular circumstances of the present case, given that it is apparent to the Panel from the Respondent’s reply to the Complainant’s cease and desist letter that the Respondent genuinely shares the critical views published there, and is intentionally seeking to draw attention to these by exercising its own right to freedom of speech. There is no suggestion, for example, that it is merely aggregating third party criticism of the Complainant as a pretext for cybersquatting and/or commercial activity.¹ Despite pointing to third party content, the use of the disputed domain name has been made for the Respondent’s own critical purposes.

In this particular case, contrary to the Complainant’s assertion, it is of no significance to the question of registration and use in bad faith that the Respondent has chosen to protect its identity by way of a privacy service. The Respondent has not done so merely to avoid being notified of the UDRP proceeding or

¹ This case should be contrasted with the “.sucks” run of recent cases involving websites containing an aggregation of third party criticism targeting a particular trademark owner, in which it was found that the respondent was not expressing true and genuine criticism but instead was using such third party material as a pretext for cybersquatting and commercial activity (see, for example, *Eutelsat v. Domain Admin, Honey Salt Ltd*, WIPO Case No. [D2021-3806](#), “Even if one accepts that aggregating third party criticism is itself a *bona fide* activity – which may be open to some debate given that most criticism sites (whether operated by an individual or otherwise) seem to focus their attention on airing a specific grievance with a specific brand owner – the Panel reckons that the use of the disputed domain name cannot be considered mere (or traditional) noncommercial fair use (i.e., done for its own critical purpose, which may even according to prior UDRP cases include incidental advertising), but rather agrees with prior panels that the content is a pretext for cybersquatting and commercial activity”).

otherwise contacted by the Complainant, given that it replied to the Complainant's cease and desist letter on the same day that it was sent. Likewise, the Complainant's submission that the circumstances indicate that the Respondent registered the disputed domain name primarily for typosquatting and phishing, to commit fraudulent impersonation, is not borne out in any way by the evidence before the Panel.

In all of the above circumstances, the Panel finds that the Complainant has not proved that the disputed domain name was registered and used in bad faith. The Panel therefore finds that the Complainant has failed to carry its burden in terms of paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: November 1, 2022