

ADMINISTRATIVE PANEL DECISION

Unicaf LTD v. Ibrahim Kazanci

Case No. D2022-4801

1. The Parties

Complainant is Unicaf LTD, Cyprus, internally represented.

Respondent is Ibrahim Kazanci, Canada.

2. The Domain Name and Registrar

The disputed domain name <unicaf.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 14, 2022. On December 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 16, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on December 19, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on December 22, 2022.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on December 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2023. The Response was filed with the Center on January 5, 2023.

The Center appointed Marina Perraki as the sole panelist in this matter on January 12, 2023. 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

Complainant is the owner of European Union Trade Mark No. 013502075 UNICAF (figurative) filed on November 26, 2014, and registered on May 5, 2015, for goods and services in classes 9, 16, 36, and 41. Complainant's corporate name, UNICAF LTD, has been registered in the Register of Companies for Cyprus since September 20, 2019, and previously as UNIC ONLINE LIMITED since January 25, 2012. As per the Complaint, Complainant is also the owner of domain names for UNICAF, such as <unicaf.org> and <unicafuniversity.com>, which according to public Whois records were registered on July 22, 2013 and March 14, 2014, respectively.

The Domain Name was registered on November 18, 2011 and resolved to a Pay-Per-Click page ("PPC page") which included links related to university scholarships (the "Website") at the time of the filing of the Complaint.

5. Parties' Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name.

B. Respondent

Respondent claims that he registered the Domain Name much earlier than the change of corporate name of Complainant from UNIC ONLINE LIMITED to UNICAF LTD, that he had no intention of taking advantage of Complainant's programs, and that the Website does not look like the website of Complainant.

Respondent has sought a finding of Reverse Domain Name Hijacking ("RDNH").

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

The Domain Name incorporates Complainant's trademark UNICAF in its entirety.

The generic Top-Level Domain ("gTLD") ".com" is disregarded, as gTLDs typically do not form part of the comparison as they are required for technical reasons (see section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the Domain Name is identical to the UNICAF mark of Complainant.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests / Registered and Used in Bad Faith

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to [Respondent] of the dispute, [Respondent's] 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) [Respondent has] been commonly known by the Domain Name, even if [Respondent has] acquired no trademark or service mark rights; or
- (iii) [Respondent is] 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.
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

Furthermore, paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, are evidence of the registration and use of the Domain Name in bad faith:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

Complainant has not demonstrated rights through registration and use on the UNICAF mark that are prior to the Domain Name registration. On the contrary, the date of registration of the Domain Name is prior to Complainant's invoked registered trademark rights. The Domain Name was registered on November 18, 2011, while the invoked trademark of Complainant was filed subsequently, namely on November 26, 2014. Where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent ([WIPO Overview 3.0](#), sections 3.8.1). Moreover, the Panel notes that Complainant appears to have been initially incorporated on January 25, 2012, under the name UNIC ONLINE LIMITED, and registered its domain names in 2013 and 2014, respectively. Accordingly, there is nothing in the record to suggest that Respondent might have had Complainant in mind when registering the disputed domain name, or even that Complainant was active at that time.

Under these circumstances and on this record, the Panel finds that Respondent has not registered and is not using the Domain Name in bad faith.

Complainant has not established paragraph 4(a)(iii) of the Policy.

In view of the Panel's determination above under paragraph 4(a)(iii) of the Policy, it is unnecessary for the Panel to address issues of rights or legitimate interests under paragraph 4(a)(ii) of the Policy.

C. Reverse Domain Name Hijacking

In the present circumstances, the Panel hereby makes a finding of Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: January 26, 2023