

ADMINISTRATIVE PANEL DECISION

HOSTINGER, UAB v. karadiridimba gitega

Case No. D2023-4257

1. The Parties

The Complainant is HOSTINGER, UAB, Lithuania, represented by Andrea López, Spain.

The Respondent is karadiridimba gitega¹, Burundi.

2. The Domain Name and Registrar

The disputed domain name <nilehostinger.net> (the “Disputed Domain Name”) is registered with Ligne Web Services SARL (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 12, 2023. On October 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 13, 2023, 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 and contact information in the Complaint.

On October 17, 2023, the Center informed the parties in French and English, that the language of the registration agreement for the Disputed Domain Name is French. On October 17, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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”).

¹ The Complainant alleges that the Respondent has been “identified using a false name: karadiridimba gitega for the registration of the disputed domain [name]”. It further claims that a Google search for the registrant email identifies another name through a LinkedIn profile. Based on the available record, the Panel is unable to determine the accurateness of this claim and will treat the Registrar-confirmed registrant, i.e., “karadiridimba gitega” as the Respondent.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 4, 2023.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on December 8, 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

The Complainant, a web hosting service platform, is a company founded in Lithuania in 2004 under the name Hosting Media. Since then, the company expanded globally and rebranded to its current name HOSTINGER in 2011.

The Complainant is the owner of several registered trademarks incorporating the term "HOSTINGER" to promote its services (the "HOSTINGER Trademarks"):

- The International wordmark HOSTINGER No. 1079958 registered on April 5, 2011, for products and services in class 42;
- The European Union semifigurative  HOSTINGER No. 018198410 registered on February 19, 2020, for products and services in classes 9 and 42;
- The United States of America wordmark HOSTINGER No. 5855966 registered on September 10, 2019, for products and services in class 42.

The Complainant is also the owner of numerous domain names incorporating the term "Hostinger", e.g., <hostinger.com>.

The Disputed Domain Name was registered on March 26, 2023, and, at the time of the Complaint, resolved to an online website offering services similar to, and competing with, those of the Complainant without its authorization. At the time of the decision, the Disputed Domain Name is inactive.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that the Disputed Domain Name is identical and confusingly similar to the HOSTINGER Trademarks, which it incorporates, only with the addition of the word "nile" which the Complainant argues to be the reference to the Nile River, most likely to indicate the region targeted by the Disputed Domain Name.

Then, the Complainant stands that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant declares not having any prior relationship to the Respondent and that the Respondent has never been authorized previously to use or register any domain names with the HOSTINGER Trademarks, whether directly or through a third party. The Complainant also considers that the Respondent's intention is to mislead and divert customers to its website, making them believe there is some type of relation or affiliation between the Respondent and the Complainant, and profit from this.

Indeed, the Disputed Domain Name resolves to an online website offering services similar to those of the Complainant. The Complainant adds that the word “Hostinger” in itself has no particular meaning, and that it can be assumed that the Respondent is not commonly known by the Disputed Domain Name.

Finally, the Complainant, asserts that the Disputed Domain Name was registered and is used in bad faith by the Respondent. The Complainant considers the use of the Complainant’s trademark in its entirety within the Disputed Domain Name is, in itself, clear evidence of bad faith. The Complainant argues that, by the nature of the Complainant’s business, and the main services offered by the Respondent on the website of the Disputed Domain Name it is extremely unlikely that the Respondent did not know about the Complainant’s trademark. Finally, the Complainant submits that the Respondent had a clear intention of profiting commercially from the registration of the Disputed Domain Name, even providing services competing with the Complainant’s, diverting traffic and customers to its own website.

B. Respondent

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

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the Disputed Domain Name is French. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that (i) the language used by the Respondent in its website is English, (ii) English is one of the official languages of Burundi, where the Respondent is allegedly located, (iii) previous communications of the Complainant to the Respondent have been in English, and (iv) The Complainant, coming from Lithuania, prefers the English language as it is more familiar than French.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties’ ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Although the addition of other terms here, “nile”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

Indeed, it appears that the Respondent has not received any authorization to use the HOSTINGER Trademarks in any manner, including for the registration of the Disputed Domain Name.

Moreover, at the time of the Complaint, the Disputed Domain Name resolved to an online website offering services similar to, and competing with, those of the Complainant without its authorization.

Finally, at the time of the decision the Disputed Domain Name is inactive. It appears from the non-use of the Disputed Domain Name, that the Respondent is not using the Disputed Domain Name with a *bona fide* offering of goods or services, nor is the Respondent making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s HOSTINGER Trademarks.

Indeed, the Panel notes that even if at the time of the decision the Disputed Domain Name is inactive, and that at the time of the Complaint, it was used to offer services similar to, and competing with, those of the Complainant without its authorization. This use of the Disputed Domain Name is evidence that 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 HOSTINGER Trademarks as to the source, sponsorship affiliation or endorsement.

Panels have also found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of the Complainant's trademark, and the composition of the Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <nilehostinger.net> be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: December 22, 2023