

# World Trademark Review *Daily*

**Mere allegations of bad faith insufficient under UDRP, even in obvious cybersquatting cases**  
**International - Hogan Lovells LLP**

**Cybersquatting**

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In a [recent decision](#) under the [Uniform Domain Name Dispute Resolution Policy \(UDRP\)](#), the panel has held that the mere registration of domain names consisting of obvious misspellings of a trademark, without supporting evidence of bad-faith registration and use, is insufficient to obtain the transfer of the domain names.

The complainant, Ticket Software LLC (Connecticut, United States), owned the US trademark TICKETNETWORK (Registration No 2,956,502), registered on May 31 2005 and used in connection with computer software for the purchase and sale of entertainment tickets. The complainant operates a website at 'www.ticketnetwork.com', where it has created an online marketplace for sale of entertainment tickets.

The respondent was Stephen Troy, a private individual from Florida, United States, who had registered the domain names 'ricketnetwork.com', 'ticketneteork.com', 'ticketnetwirk.com', 'ticketnetworj.com' and 'tivketnetwork.com' using a proxy service provided by the domain name registrar. The domain names were registered on January 13 2011 and did not point to an active website.

The complainant contended that the respondent had engaged in typosquatting, given that the domain names consisted of common typographical errors made by internet users when attempting to reach the complainant's official website, and thus filed a complaint under the UDRP to recover the domain names.

To be successful in a complaint under the UDRP, a complainant must satisfy all of the following three requirements:

- The domain name is identical, or confusingly similar, to a trademark or service mark in which the complainant has rights;
- The respondent has no rights or legitimate interests in respect of the domain name; and
- The domain name has been registered and is being used in bad faith.

Regarding the first limb of the three-prong test, a complainant must first demonstrate that it has registered or unregistered trademark rights, regardless of where and when the mark was registered (or first used), although these factors may be relevant for the third limb of the test.

The complainant had submitted as evidence its US federal trademark registration for TICKETNETWORK. The panel held that the complainant's federal trademark registration was sufficient to establish that it had rights in the mark TICKETNETWORK.

The panel then went on to examine whether the domain names were identical, or confusingly similar, to the TICKETNETWORK mark. The panel noted that each domain name consisted of misspellings of the complainant's mark and that such misspellings were insufficient to preclude a finding of confusing similarity with the mark.

The panel thus held that the domain names were confusingly similar to the complainant's TICKETNETWORK mark. The complainant therefore met the first requirement under the UDRP.

Turning to the second limb of the three-prong test, the complainant argued that the respondent had no rights or legitimate interests in the domain names. Furthermore, it asserted that the respondent was not sponsored by, or affiliated to, the complainant in any way, nor had the complainant authorised the respondent to use the complainant's TICKETNETWORK mark in a domain name. The respondent failed to respond to the complainant's contentions, and did not claim nor demonstrated that it had rights or legitimate interests in the domain names.

The panel therefore held that the respondent did not have any rights or legitimate interests in the domain names, and thus the complainant satisfied the second requirement under the policy.

Turning to the third limb of the UDRP, the panel held, however, that the complainant had failed to provide sufficient evidence of the respondent's registration and use of the domain names in bad faith.

Paragraph 4(b) of the policy sets out four non-exhaustive factors that may indicate that a respondent registered and used a domain name in bad faith, including but not limited to:

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1. circumstances indicating that the respondent has registered or has 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 the holder's documented out-of-pocket costs directly related to the domain name;
2. the 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 the respondent has engaged in a pattern of such conduct;
3. the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
4. by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the holder's website or location.

Typosquatting cases generally fall under either Paragraph 4(b)(iii) or 4(b)(iv) of the policy. In the present case, the complainant contended that the respondent was using the domain names to redirect customers, for financial gain, to another website offering similar services to those of the complainant (a platform where customers could buy tickets to entertainment events), in accordance with Paragraph 4(b)(iv). The complainant argued that the "respondent's typosquatting behaviour is, in and of itself, evidence of bad faith", based on a previous UDRP decision, *National Association of Professional Baseball Leagues Inc, d/b/a Minor League Baseball v Zuccarini (WIPO Case D2002-1011)*, which held that "typosquatting is inherently parasitic and of itself evidence of bad faith".

However, the panel noted that:

*"while the respondent's behaviour may be characterised as typosquatting and such behaviour may support a finding that the domain names are confusingly similar to the complainant's mark, some evidence of abuse at least must be provided for the purpose of the third element".*

Indeed, in the present case, the complainant failed to put forward evidence (such as screen captures of the website associated with the domain names) supporting its claim that the respondent was using the domain names to redirect to another website offering similar services, even after having been given the opportunity by the panellist to do so. In view of this deficiency, the panel was unable to make a finding against the respondent. The panel concluded that:

*"ultimately, the burden is on the complainant to prove its case and it is this panel's view that confusingly similarity combined with limited assertions, alone, is not sufficient to support a finding that the respondent registered and is using or had used the domain names in bad faith".*

The panel thus held that the complainant's mere allegations of bad-faith registration and use of the domain names, without supporting evidence, were insufficient to satisfy the burden required by the third element of the UDRP.

The panel therefore denied the transfer of the domain names to the complainant.

This decision illustrates that, whilst the UDRP was designed to provide a faster and cheaper alternative to court proceedings, complaints are still reviewed with a fine-tooth comb. Complainants are thus required to satisfy all three elements of the UDRP and to support all their allegations with the relevant evidence. It is simply not enough to merely assert that the three elements of the UDRP have been met without providing supporting evidence, even in obvious cases of cybersquatting.

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