

ADMINISTRATIVE PANEL DECISION

TicketSms s.r.l. and Mr Andrea Vitali v. Franklin Iziren
Case No. D2023-0442

1. The Parties

The Complainants are TicketSms s.r.l. (“First Complainant”), Italy, and Mr Andrea Vitali (“Second Complainant”), Italy, represented by Studio Legale Antonio Gallo, Italy (Collectively referred as “Complainants”).

The Respondent is Franklin Iziren, United Kingdom, represented by Adlex Solicitors, United Kingdom.

2. The Domain Names and Registrar

The disputed domain names <ticketsms.com> and <ticketsms.net> are registered with Instra Corporation Pty Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2023. On January 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 1, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainants on February 10, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on February 10, 2023. The Respondent sent an informal communication on February 14, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on February 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2023. The Respondent sent an informal communication on February 17, 2023. On February 22, 2023, the Respondent requested an automatic

extension of the due date for Response. The Center fixed March 11, 2023 as the extended due date for Response. The Response was filed with the Center on March 8, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on March 29, 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 First Complainant was established in 2017 and operates a digital ticketing system for event organizers. The system is certified by SIAE (the Italian Society of Authors and Publishers) and by the Italian Revenue Agency. The Second Complainant is a founder and a legal representative of the First Complainant.

The First Complainant is the owner of the following trademark registrations of the sign "TICKETSMS" (the "TICKETSMS trademark"):

- the European Union Trade Mark TICKETSMS (figurative) with registration No. 018271710, registered on November 10, 2020, for services in International Classes 35, 36, 41, and 42; and
- the United Kingdom trademark TICKETSMS (combined) with registration No. UK00918271710, registered on November 10, 2020, for services in International Classes 35, 36, 41, and 42.

The Second Complainant is the owner of the domain name <ticketsms.it>, registered on February 18, 2015.

The disputed domain name <ticketsms.com> was registered on June 8, 2009, and the disputed domain name <ticketsms.net> was registered on June 9, 2009. They currently resolve to parked webpages. On February 8, 2014, the disputed domain name <ticketsms.com> redirected to the website at the domain name <clickit4tickets.co.uk>, which belongs to the Respondent.

The Respondent is the owner of the United Kingdom trademark TICKET SMS SIMPLE MANAGED SOLUTION (combined) with registration No. UK00003117385, registered on October 9, 2015, for services in International Classes 38 and 41 (the "Respondent's trademark").

The Respondent is also the owner of the domain name <ticketsms.co.uk>, registered on May 16, 2011.

5. Parties' Contentions

A. Complainant

The Complainants maintain that the disputed domain names are identical to their TICKETSMS trademark.

According to the Complainants, the Respondent has no rights or legitimate interests in respect of the disputed domain names, because he has no trademark rights for "TICKETSMS". They point out that even though the disputed domain names were registered in 2009, several years before the beginning of the Complainants' business activity and trademark registration, they have never been used by the Respondent to distinguish goods and services on the market, and the Respondent is not commonly known by the disputed domain names. According to the Complainants, this confirms that the Respondent's purpose has always been the sale of the disputed domain names for profit. They add that the disputed domain names were registered and have been permanently renewed since 2009 just to be maintained as parked domain names. The Complainants also submit that the Respondent's statement in its email of July 30, 2015, that "I have over 80 domain names registered since 1999", shows that the Respondent is a cybersquatter.

The Complainants contend that the disputed domain names were registered and are being used in bad faith. According to them, the disputed domain names were registered and permanently renewed for the sole purpose of selling them to the Complainants for valuable consideration in excess of the Respondent's out of pocket costs directly related to the disputed domain names. The Complainants state that the disputed domain names have never been used by the Respondent who repeatedly offered them for sale to the Complainants. The Respondent was contacted for the first time by the Second Complainant in 2015, when the Second Complainant was starting his business and was interested in buying the disputed domain name <ticketsms.com>. He sent the Respondent an email in order to know if there was any interest in selling the disputed domain name <ticketsms.com> and what its price was, and the Respondent asked the amount of GBP 250,000. The Complainants note that even though the Second Complainant refused the offer, the Respondent continued to send him other emails aimed to maintain a connection and to entice him to buy the disputed domain names. A further proposal of sale for GBP 15,000 was made by the Respondent to the Complainants by email in June 2020, where the Respondent's words show that he was monitoring the Complainants' business. The Complainants note that in his emails the Respondent invited the Complainants to consider his offer envisaging also the potential detrimental consequences that could arise from the sale of the disputed domain names to third parties. The Complainants point out that a further proposal of sale for GBP 20,000 was sent to them in January 2023. According to the Complainants, the email exchange between the Parties demonstrates the lack of any use of the disputed domain names by the Respondent over the years and the improbability of any *bona fide* use of them. The Complainants state that the Respondent's bad faith is further proved by the Respondent's registration of the domain name <ticketsms.co.uk>, as mentioned in the Respondent's email of June 2020.

B. Respondent

The Respondent notes that he registered the disputed domain names on June 8, 2009, and June 9, 2009, with the purpose to use them in connection with a mobile ticketing technology, which the Respondent proposed to create and market in conjunction with a number of other online ticketing ventures. The Respondent maintains that he did not register and could not have registered the disputed domain names by reference to the Complainants, because their rights did not exist before 2015.

The Respondent maintains that at the time of registering the disputed domain names, he was also planning to launch a website called "ClickIt4Tickets", comparing prices for tickets available from major ticket websites. The Respondent specifies that he operated this website between 2010 and 2015. In this regard, the Respondent submits that he is the owner of the United Kingdom trademark CLICKIT4TICKETS.CO.UK with registration No. UK00002423456, registered on September 14, 2007 for services in International Class 41, and of the United Kingdom trademark CLICKIT4TICKETS.CO.UK with registration No. UK00003071040, registered on December 19, 2014 for services in International Class 41.

The Respondent explains that the term "SMS" in the disputed domain names was intended to convey the idea of text messaging but also to function as an acronym for the slogan "Simple Managed Solution". In 2012, the Respondent held an online competition for the design of a logo for his venture, and the winning designs all included the slogan "TICKET SMS / Simple Managed Solution". The Respondent states that the Ticket SMS technology never came to pass, mainly because mobile technology was new and expensive at that time, so for a period in 2014-2015, the disputed domain name <ticketsms.com> redirected to the Respondent's ClickIt4Tickets website.

The Respondent submits that before the first approach by the Complainants in 2015, he had acquired many other "ticket"-related domain names for use in connection with his various online ticketing projects.

The Respondent was receptive to the Complainants' enquiry about the purchase of the disputed domain name <ticketsms.com> in July 2015 because by then he had decided to abandon his various online ticketing projects. In his email response on July 10, 2015, the Respondent explained that "TicketSMS.com" referred to mobile phone technology and attached his logo, which he also offered to sell. The Complainants' reply on the same day falsely stated that the disputed domain name was required for a "university project". The Respondent states that after the Complainants rejected the Respondent's offer of GBP 250,000, the

Respondent decided to apply for a trademark to protect his TICKETSMS logo. The Respondent referred to this trademark when he sent his follow up email to the Complainant on July 30, 2015. In its response the following day, the Complainants reiterated the false assertion about a university project.

The Respondent points out that the Complainants have omitted their email of January 8, 2016, to the Respondent asking if there was “any news to buy the ticketsms.com domains?” On August 1, 2016, the Respondent emailed the Complainants referring to its ticketsms.it project, and the Complainants omitted for the Complaint this email as well.

The Respondent points out that the Complainants did not respond to his email of June 20, 2020, in which the Respondent offered to accept GBP 15,000, but shortly after, on July 10, 2020, they applied for their own trademark. Given this timing, the Respondent submits, their trademark application was designed to bolster their case against the Respondent. The Respondent submits that on January 19, 2023, the Complainants again emailed the Respondent, asking: “News about ticketsms.com domains?” and offering EUR 1,000, but omitted this email from their Complaint, and the Respondent replied on the same date.

The Respondent accepts that the disputed domain names are confusingly similar to the Complainants’ trademark, but rejects their assertion that the disputed domain names infringe their rights. The Respondent also disputes both the accuracy and relevance of the Complainants’ assertions that sale or use of the disputed domain names would inevitably create a likelihood of confusion or affect their reputation.

The Respondent contends that the factual background described above demonstrates that, before the Respondent received any notice of the dispute, he used, or made demonstrable preparations to use, the disputed domain names or a name corresponding to the domain names, in connection with a *bona fide* offering of services in accordance with paragraph 4(c)(i) of the Policy. The Respondent adds that, contrary to the Complainants’ assertion, he does own a registered trademark corresponding to the disputed domain names, which is further evidence of his rights and legitimate interests therein. According to the Respondent, the Complainants are wrong to suggest that the Respondent has never used the disputed domain name <ticketsms.com>, because the Respondent redirected it to one of his online ticketing websites.

According to the Respondent, the Complainants are also wrong to claim that the Respondent’s sole purpose has always been to sell the disputed domain names for profit. He adds that, even if that was his intention, it would have been unobjectionable, and the practice of registering a domain name for subsequent resale (including for a profit) would not by itself support a claim that it was in bad faith with the primary purpose of selling it to a trademark owner (or its competitor). The Complainants’ claim that “it is clear that the Respondent is a cybersquatter” is an absurd conclusion to draw from the fact that the Respondent owns over 80 domain names, because ownership of many domain names and trading therein are entirely legitimate activities in the absence of any evidence of cybersquatting intent.

The Respondent points out that the disputed domain names could not have been registered in bad faith because they were registered in 2009, some six years before the earliest point when the Complainants could have acquired TICKETSMS trademark rights, as according to them, they started their business in 2015.

The Respondent maintains that he used or made demonstrable preparations to use the disputed domain names for his mobile ticketing technology venture and not for the purpose of for sale to anyone. He points out that he only formed that intention much later, after the Complainants’ approach in 2015.

According to the Respondent, the Complainants were well aware that the Respondent could not have registered the disputed domain names for sale to the Complainants or to their competitor, because the Complainants have carefully adjusted their claim that the disputed domain names were “registered and permanently renewed for the purpose of selling [them] to the owner of the corresponding trademark or service mark (nowadays identifiable in the Complainants)”. The Respondent adds that the Complainants may have thought that the Respondent’s price of GBP 250,000 was “exorbitant”, but it was entirely legitimate as, having acquired the disputed domain names in good faith, the Respondent was entitled to place whatever price he wished on the disputed domain names.

The Respondent admits that he kept an eye on the Complainants' business following their initial approach to buy the disputed domain names, which made him aware of the falsity of their claim that they wished to acquire the disputed domain names for a university project. According to the Respondent, there is nothing objectionable in the fact that he pointed out the obvious advantage for the Complainants' business if they possessed his three legitimately acquired "ticketsms" domain names rather than having them potentially and legitimately owned by other businesses in other countries.

In the Respondent's view, in order to support their narrative that the Respondent continually sought to "entice" the Complainants to buy the disputed domain names, they have omitted their own emails of January 8, 2016, and January 9, 2023, enquiring about purchase of the disputed domain names. The Complainants wished to conceal their own enthusiasm about buying the disputed domain names. The Respondent notes that the Complainants say that the final proposal by the Respondent of the sale price of GBP 20,000 was sent to the Complainants in response to an enquiry of the same day from them.

The Respondent denies that there is a bad faith passive holding of the disputed domain names. According to him, even if the disputed domain names had been held passively (which they were not), the doctrine is inapplicable where, as here, the Complainants are unable to establish registration in bad faith.

The Respondent maintains that his registration of the domain name <ticketsms.co.uk> supports his good faith as it was registered in 2011 – well before the Complainants could have acquired any trademark rights.

The Respondent requests a finding that the Complainants have engaged in reverse domain name hijacking ("RDNH"). He contends that the Complainants have failed by a large margin as they were very well aware that they could not succeed under the third element. They acknowledge that the Respondent acquired the disputed domain names in 2009, well before the Complainant could have acquired trademark rights, and had no doubt that their case did not fit within the Policy. The Respondent notes that the Complainants repeatedly claim that the Respondent has never used the disputed domain names, whereas it seems unlikely that they did not check the Wayback Machine, which shows that the Respondent used the disputed domain name <ticketsms.com> for a website in 2014 to 2015.

The Respondent also points out that the Complainants repeatedly invoke his alleged lack of rights or legitimate interests, whereas his references in pre-action correspondence to mobile phone technology, as well as to his logo and CLICKIT4TICKETS.CO.UK trademark, should have alerted the Complainants that the Respondent was likely to possess rights or legitimate interests. The Respondent adds that the Complainants sought to mislead him by claiming that they wanted the disputed domain names for a "university project".

According to the Respondent, the Complainants also sought to mislead the Panel by carefully omitting certain pre-action emails in order to downplay their own enthusiasm to acquire the disputed domain names. In the Respondent's view, they were also motivated to conceal their very belated offer of EUR 1,000 in January 2023, which was not made in good faith but was instead designed to provoke a reaction from the Respondent in order to bolster the Complainants' case in this proceeding, which was filed only a week later.

The Respondent maintains that the lengthy pre-action correspondence from the Complainants does not contain the slightest hint that they thought that they possessed any legal claim relating to the disputed domain names. The Respondent contends that this is a classic "Plan B" case where a party, having been frustrated in its negotiations to buy a domain name, resorts to the ultimate option of a highly contrived and artificial claim not supported by any evidence or the plain wording of the UDRP.

The Respondent states that he has been put to unnecessary cost and inconvenience in having to defend a case that should never have been filed.

6. Discussion and Findings

6.1. Procedural issue – Consolidation of the Complainants

The Complainants have jointly filed the Complaint, and submit that the Second Complainant is a founder and a legal representative of the First Complainant.

Paragraph 10(e) of the Rules grants a panel the power to consolidate multiple domain name disputes. The Policy and the Rules do not directly regulate the consolidation of multiple Complainants in a single Complaint. As discussed in section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), in assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether the complainants have a specific common grievance against the respondent or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and whether it would be equitable and procedurally efficient to permit the consolidation.

As discussed in section 6.2.A below, the Complainants are to be considered as both having rights in the TICKETSMS trademark for the purposes of the Policy, and they have brought forward certain common grievances against the Respondent in the Complaint. The Respondent has not objected to the consolidation of the Complainants and has not advanced any reasons why it may not be equitable and procedurally efficient to consolidate them. Therefore, the Panel decides to allow the consolidation of the Complainants in this proceeding.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain names:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (ii) the disputed domain names were registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainants have provided evidence that the First Complainant is the owner of the TICKETSMS trademark, and submit that the Second Complainant is a founder and a legal representative of the First Complainant. As discussed in section 1.4.1. of the [WIPO Overview 3.0](#), a trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. The Panel considers that it is appropriate to apply this principle to the Second Complainant in the present proceeding, as he is affiliated to the First Complainant and the Complaint is brought by them jointly. In view of this, the Panel accepts that the two Complainants have rights in the TICKETSMS trademark for the purposes of the Policy.

This trademark was registered in 2020, while the disputed domain names were registered in 2009. As discussed in section 1.1.3 of the [WIPO Overview 3.0](#), while the UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed. The fact that a domain name may have been registered before a complainant has acquired trademark rights does not by itself preclude a complainant's standing to file a UDRP case, nor a panel's finding of identity or confusing similarity under the first element. However, where a domain name has been registered before a complainant has acquired trademark rights, only in exceptional cases would a complainant be able to prove a respondent's bad faith.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the [WIPO Overview 3.0](#). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” and “.net” gTLDs of the disputed domain names.

Each of the disputed domain names incorporates the word elements of the TICKETSMS trademark without any additional elements. In view of this, the Panel finds that the disputed domain names are identical to the TICKETSMS trademark in which the Complainants have rights.

B. Rights or Legitimate Interests

In view of the finding of the Panel that the Complainant has failed to establish that the disputed domain names have been registered in bad faith, it is not necessary to address the Complainants’ contention that the Respondent does not have rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

As discussed in section 3.8.1 of the [WIPO Overview 3.0](#), 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. As an exception to this general proposition, in certain limited circumstances where the facts of the case establish that the respondent’s intent in registering the domain name was to unfairly capitalize on the complainant’s nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include registration of a domain name: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent’s insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant’s filing of a trademark application.

The Second Complainant started business activities under the TICKETSMS trademark in 2015, the First Complainant was registered in 2017, and the TICKETSMS trademark was registered in 2020, while the disputed domain names were registered in 2009. The Complainants have not addressed the issue of how the registration of the disputed domain names could have been made in bad faith in these circumstances, and have not referred to any of the scenarios described in section 3.8.1 of the [WIPO Overview 3.0](#).

There is indeed nothing in the case to support a conclusion that in 2009 the Respondent might have anticipated that the Complainants would eventually start a business under the TICKETSMS trademark several years later. It is therefore implausible that the Respondent might have targeted them with the registration of the disputed domain names.

For the above reasons, the Panel finds that the Complainant has failed to establish that the disputed domain names have been registered in bad faith. As long as the Policy contains a cumulative requirement for registration and use in bad faith, this means that it is not necessary to address the issue of whether the disputed domain names were used in bad faith.

7. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if “after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”. RDNH is furthermore defined under the Rules as “using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

As summarized in Section 4.16 of the [WIPO Overview 3.0](#), reasons articulated by panels for finding RDNH include, *inter alia*: (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements, (ii) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, (iii) unreasonably ignoring established Policy precedent notably as captured in the [WIPO Overview 3.0](#) – except in limited circumstances which *prima facie* justify advancing an alternative legal argument, (iv) and basing a complaint on only the barest of allegations without any supporting evidence. Given the undertakings in paragraphs 3(b)(xiii) and (xiv) of the UDRP Rules, some panels have held that a represented complainant should be held to a higher standard.

In the present case, the Complainants were well aware that the Respondent could not have known and targeted them in 2009, when he registered the disputed domain names, because they had started activities under the TICKETSMS trademark only in 2015. The Complainants, being represented by counsel, must have understood that the only logical conclusion from this is that the Respondent could not have registered the disputed domain names in bad faith under the Policy, and that the Complaint could not therefore succeed. Nevertheless, the Complainants proceeded with filing it.

Taking into account the above and the findings in section 6.2.C, the Panel has reached the conclusion that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

8. Decision

For the foregoing reasons, the Complaint is denied.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: April 12, 2023