

UDRP: the pivotal role of substantial evidence

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- Aitch Group Limited, owner of the mark AITCH, sought the transfer of 'aitch.com' under the UDRP
- The panel found that the assertion that the domain name was registered primarily for the purpose of selling it to the complainant was unsubstantiated by evidence
- Evidence of common law rights and reputation was crucial as the trademark registration was obtained after the domain name was registered, but the complainant provided no such evidence

In a recent [decision](#) under the [Uniform Domain Name Dispute Resolution Policy](#) (UDRP) before WIPO, a panel has refused to order the transfer of the disputed domain name 'aitch.com' because the complainant had failed to provide sufficient evidence that the domain name was registered and used for the specific purpose of targeting the complainant.

Background

The complainant was Aitch Group Limited, a property developer in London. It owned an EU trademark registration for AITCH, registered in September 2014.

The respondent was an individual with an address in the Czech Republic. The respondent registered the disputed domain name in November 2000. At the time of filing of the complaint, the domain name diverted to a parking page on the BrandBucket website that listed the domain name for sale for \$31,820 or for lease for \$2,918 per month. The listing stated:

“ A short, technical name with a nod to 'AI' that feels totally neat in any industry. Possible uses: A virtual reality company. An animation studio. An app developer. An arcade. A trade show. ”

Before filing the complaint, a representative of the complainant and BrandBucket had engaged in sporadic email negotiations over an eight-year period regarding the purchase of the disputed domain name, yet no deal was reached.

To be successful in a complaint under the UDRP, a complainant must satisfy each of the following three requirements under Paragraph 4(a):

- (i) the domain name registered by the respondent is 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 domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Parties' contentions

The complainant argued that it satisfied each of the requirements and, in particular, contended in respect of bad faith that the domain name was registered or acquired primarily for the purpose of selling, or otherwise transferring the domain name registration to the complainant for valuable consideration in excess of the respondent's out-of-pocket costs directly related to the domain name. The complaint did not provide any evidence as to when the complainant was founded, when the complainant first started to use the AITCH mark or the reputation of the complainant or the AITCH mark.

In response, the respondent argued that 'Aitch' was a common noun used by several companies and expected to continue to be used by many more companies in the future. Additionally, the respondent highlighted that the disputed domain name held substantial digital value and that the complainant, in making an offer to purchase the domain name, was fully aware of its value.

Decision

Supplemental filing

After the panel had been appointed, the complainant filed an unsolicited supplemental filing that rebutted the respondent's response. In particular, the supplemental filing asserted that the complainant had been trading as 'Aitch' since 1996, but lacked supporting evidence. Ultimately, the panel determined that the complainant failed to demonstrate or address any exceptional circumstances warranting consideration of the supplemental filing. Even if the supplemental filing were to be admitted, the panel concluded that it would not impact its analysis of the third element of the case.

First element

The panel found that the complainant had successfully demonstrated rights concerning a trademark or service mark in accordance with the UDRP and that, given that the entire trademark was replicated within the disputed domain name, the complainant had satisfied the first requirement under the UDRP.

Second and third elements

In light of its decision under the third element of the UDRP, the panel did not comment on the second element.

In evaluating the third element, the panel considered whether the respondent had registered and was using the disputed domain name in bad faith. Ultimately, the panel found no bad faith registration, as the complainant's assertion that the domain name was registered primarily for the purpose of selling it to the complainant was unsubstantiated by evidence. Nor had the complainant produced any evidence of it having accrued common law rights in the AITCH mark or indeed any rationale as to why the respondent would have likely been aware of the complainant at the time of registration. The panel found that adducing such evidence was crucial to the case given that the complainant's trademark registration was obtained after the respondent's registration of the domain name.

Similarly, the panel found no evidence of bad-faith use by the respondent, as the complainant did not provide any evidence that the respondent had targeted the complainant during the 22-year period between the registration of the domain name and the filing of the complaint.

The panel noted that the fact that the domain name was listed for sale for approximately \$30,000 was not, in itself, conclusive evidence of bad faith. Indeed, the panel went further and, while acknowledging that it was beyond a panel's remit to determine the fair value of domain names, commented that the price did not seem outrageous, taking into account factors including the length of the domain name (five letters), the presence of the term 'ai' and the duration of the respondent's ownership.

Reverse domain name hijacking

The respondent requested a finding of reverse domain name hijacking, but the panel opted not to make such a determination, noting that the respondent had not presented any evidence that the complainant had brought this case to harass the respondent or as an abuse of process. Instead, the panel underlined that use of the UDRP should be limited to cases that were

thoroughly substantiated and took account of relevant and freely-available jurisprudence.

Comment

This case provides an insight into how UDRP cases may be unsuccessful as a result of lack of evidence, in particular in this case regarding the complainant's reputation and common law rights in the AITCH mark before the registration of the disputed domain name. The panel's caution against filing cases without sufficient evidence serves as a reminder that UDRP complaints should be thoroughly substantiated and not contain bare assertions.

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