Decision for dispute CAC-UDRP-100197

Case number	CAC-UDRP-100197
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Domain names	loyaltypartners.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	Loyalty Partner GmbH

Complainant representative

Organization	Čermák Hořejš Matějka a spol.

Respondent

Organization	LOYALTY PARTNERS, s.r.o.

IDENTIFICATION OF RIGHTS

The Complainant uses the domain name <loyaltypartner.com>, which is connected to the official website of the Complainant. Complainant is the owner of the several device marks, including Community device mark 'Loyalty Partner', CTM number 955849, registered on 4 February 2000 in classes 9, 35, 36, 39 and 42 for, inter alia, business consultancy for the organization of customer loyalty systems.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

- SUMMARY -

Complainant is a German company with its registered offices in Munich. It enables medium and large businesses to implement and run customer loyalty schemes, a service sometimes referred to as professional customer management.

Respondent is a Slovak company with its registered offices in Bratislava. Respondent appears to offer services identical to the services offered by Complainant. The disputed domain name <loyaltypartners.com> (the 'Domain Name'), which is registered by Respondent, was first registered on 14 April 2003. It was renewed/modified on 1 April 2010.

The Complainant believes that the domain is confusingly similar to its various trademarks and its trade/company name, that

it is being used to offer identical services, and as a result it thus qualifies as a competitor's site, acting to divert consumers and dilute the Complainant's prior trademark rights.

The Complainant requests that the domain < loyaltypartners.com > be transferred to it.

- LANGUAGE -

The Rules, paragraph 11, state: "Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

Complainant states that it does not know the language of the Registration Agreement, however argues that the language of the Proceedings should be English. Complainant has argued that Respondent is able to communicate in the English language as it offers its services in English through the website that is linked to the Domain Name. Respondent has not submitted a Response containing any arguments in this respect. Therefore, the Panel hereby decides that, in accordance with paragraph 11 of the Rules, English shall be the language of the present administrative proceeding and the decision shall thus be rendered in English.

- FACTUAL GROUNDS -

-- COMPLAINANT --
The Complainant is a German company Loyalty Partner GmbH registered under the number HRB 163383, with registered offices at Theresienhöhe 12, 80339 Munchen, GERMANY. The Complainant is a holding company. Its subsidiary PAYBACK GmbH has been registered at least since 1998, under the name Loyalty Partner GmbH. The trade name has been passed from the subsidiary to the holding company. The Complainant is a holder of numerous trademarks (details below) domains and unregistered signs containing the elements "LOYALTY" and "PARTNER". The company is a very successful business which enables medium and large businesses to implement and run customer loyalty schemes, which ensure that, for a small reward, customers' habits and satisfaction levels can be monitored and services tailored to their preferences. The field is sometimes referred to as professional customer management. The business is novel in that the Complainant's customers (medium to large businesses – usually retail) share consumer data about their customers, thus providing each other with an in-depth understanding of their customers (i.e. thus a grocery outlet knows what furniture its customer buys and can thus tell if the consumer is thrifty or is a spendthrift, prefers discount or luxury items etc..)

- Evidence:
o Extracts from the companies register with a translation [Exhibit 1]

-- COMPLAINANT'S RIGHTS --

--- TRADE MARKS –-
The Complainant is the owner of the following trademarks:

- CTM no. 955849 „LOYALTY PARTNER" (figurative) with priority from 14.10.1998, registered since 4.2.2000,
and registered under the International Classification of Goods and Services in :

- Class 9: Visually and/or machine readable data carriers, for entering bonus and reward transactions, in particular credit cards and cheque cards containing machine readable identification data and/or information, in particular magnetic cards and chip cards being so-called smart cards, all the aforesaid data carriers with integrated payment and/or telecommunications functions; data reading apparatus for the aforesaid data carriers.
- Class 35: Advertising, merchandising (sales promotion), business consultancy for the organisation of customer loyalty

systems, in particular in the field of bonus and reward schemes.
- Class 36: Distribution of data carriers, for entering bonus and reward transactions, in particular credit cards and cheque cards containing machine readable identification data and/or information, in particular magnetic cards and chip cards being so-called smart cards (included in class 36); financial services, payment transactions, electronic banking.
- Class 39: Organisation, booking and arranging of travel and tours, courier services, escorting of travellers, travel reservation, car rental.
- Class 42: Design of databases, database management, in particular the storage, processing, analysing and providing of individual customer data relevant to a particular sector; planning, coordination and promotion of customer loyalty systems, in particular bonus and reward schemes; distribution of data reading apparatus for the aforesaid data carriers; technical business consultancy for customer loyalty systems, in particular in the field of bonus and reward schemes.

- CTM no. 3841657 „LOYALTY PARTNER“ (figurative) with priority from 19.5.2004, registered since 19.5.2004 and registered under the International Classification of Goods and Services in :

- Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data-carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers, modems, terminals; software and computer programs; visually readable and/or machine-readable data carriers for booking bonus transactions, including data carriers with integrated payment and/or telecommunications functions; data reading apparatus for reading the aforesaid data media; computer software for customer loyalty programmes (incentive programmes), database and database management software.
- Class 35: Advertising; business management; business and management consultancy services; business administration; office work; merchandising (promotion);business consultancy with regard to customer loyalty systems, professional business and organisation consultancy with regard to customer loyalty systems, customer loyalty marketing, presentation of goods and services; providing online information via marketing, marketing research, bonus, publicity, customer loyalty and/or reward programmes; operating a platform for customer loyalty programmes on computer networks, including the Internet; compilation, updating and storing of data in databases.
- Class 36: Insurance; financial affairs; monetary transactions; real-estate affairs; issuing data carriers for entering bonus and reward transactions (included in class 36);services in the field of payment transactions, electronic banking.
- Class 38: Telecommunications; call centre services, namely hotline services; providing access to data networks; providing access to databases; leasing access to computer networks.
- Class 41: Education; providing of training; entertainment; sporting and cultural activities.
- Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services; database design, construction and maintenance; technical planning and technical consultancy with regard to customer loyalty systems; data security, data storage, data management on servers, data management via computer networks.

The Complainant uses these trademarks in Germany, other EU states, as well as elsewhere. This is clear from the Complainant’s website.

- German National trademark no. 30364931 „LOYALTY PARTNER“ (figurative) with priority from 10.12.2003, registered since 02.14.2004 and registered under the International Classification of Goods and Services in classes: 36, 9, 35, 38, 41, 42. On which international trademarks identified further below are based.

- German National trademark no. 39823001 „LOYALTY PARTNER“ (figurative) with priority from 24.04.1998, registered since 21.07.1998 and registered under the International Classification of Goods and Services in classes: 9, 35, 36, 39, 42.

- German National trademark no. 39823001 „LOYALTY PARTNER SOLUTIONS“ (figurative) with priority from 24.04.1998, registered since 21.07.1998 and registered under the International Classification of Goods and Services in classes: 9, 35, 36, 39, 42.

Evidence:
o Extracts from the trademarks register [Exhibit 2]
o Copies of the company website extracts located at www.loyaltypartner.com with reference to the website as a whole, note in particular the section PRESS/Releases [Exhibit 3]
o Copies of the records at www.archive.org for the website www.loyaltypartner.com with reference to the records as a whole, (www.archive.org is an independent archive of websites) [Exhibit 4]

The Complainant is also the parent company of the 100% subsidiary company Payback GmbH (formerly Loyalty Partner GmbH). Payback GmbH has signed agreements with Loyalty Partner GmbH, transferring all its trademarks to the Complainant. The changes have to date not been implemented in all the registers (the changes are expected to be recorded soon). The subsidiary payback is then for the meantime an owner of the following trademarks:

- International Trademark no. 859358 “LOYALTY PARTNER” (figurative) with priority from 10.12.2003, registered since 26.5.2004
and registered under the International Classification of Goods and Services in classes 9, 35, 36, 38, 41, 42.
This trademark is registered in CHINA, CROATIA, NORWAY, RUSSIA, SWITZERLAND, TURKEY and the UNITED STATES.

- International Trademark no. 981242 “LOYALTY PARTNER” (figurative) registered since 9.5.2004
and registered under the International Classification of Goods and Services in classes 9, 35, 36, 38, 41, 42.
This trademark is registered in CHINA, CROATIA, SWITZERLAND, TURKEY. With registration pending in NORWAY, RUSSIA and the UNITED STATES.

- International Trademark no. 986686 “LOYALTY PARTNER SOLUTIONS” (figurative) with priority from 14.02.2008 and registered since 14.8.2008
and registered under the International Classification of Goods and Services in classes 9, 35, 36, 38, 41, 42.
This trademark is registered in UNITED STATES and the EUROPEAN COMMUNITY.

Evidence:
o Extracts from the trademarks register [Exhibit 5]

The trademarks form a family of trademarks. Therefore any similar trademarks registered by any person, shall be considered to be registered with the permission of the Complainant as part of an expansion of the trademark line.

--- WELL KNOWN TRADE MARKS ---

The Complainant’s revenues were in 2009 almost 209 million Euros. Its clients include international businesses such as ARAL, DM-DROGERIE MARKT and KAUFHOF WARENHAUS, Deutche Bahn, AG EUROPcar, and Appollo-Optik. This means that its trademark is well known and has a positive reputation among clients (medium/large businesses). The company has offices in 6 international cities. It has won numerous industry awards including being listed in “Bayern’s top 50” in 2007, it was a finalist in the 2007 “European Business Awards”, and consistently places as one of Germany’s top employers.

Evidence:
o Copies of articles published about the Complainant referring to it and its trademarks [Exhibit 6]

--- TRADE NAME ---
--- COMPANY NAME ---

The Complainant is a company registered in Germany. Since Germany is a member of the Paris Convention for the Protection of Industrial Property, which in Article 8 states that “[a] trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.”

Thus the Complainant is of the opinion that it has a right in the trade name “Loyalty partner.” Its position is strengthened by the fact that the trade name is duly registered with the court in Munich. The original registration of the company name Loyalty Partner is from 1998. The company now called PAYBACK GmbH used to use the trade name Loyalty Partner, as its registered company name, but this name was transferred to the Complainant recently.

The Complainant is therefore basing its prior rights on its trade name the use of which dates back to 1998.

--- DOMAIN NAME ---

The Complainant is the owner of the gTLD domain < loyaltypartner.com > registered since 21.02.1999. This has clear priority over the Respondent’s domain name < loyaltypartners.com > from 14.04.2003.

-- RESPONDENT --

The Respondent is a Slovak company LOYALTY PARTNERS s.r.o. spol., ID No. 35 881 500, with registered offices Kutlíkova 17, 852 50 Bratislava, SLOVAKIA. The Complainant knows little about the Respondent. The Respondent appears to be a company offering identical services, i.e. implementation and operation of customer loyalty schemes. Its activities are much smaller than in the case of the Complainant and of a local scope only its activitie4s appear restricted to the Czech Republic and Slovakia.

The Respondent is the owner of the domain < loyaltypartners.com >, registered on 14.04.2003.

The Respondent is the owner of a Slovak national figurative trademark no. 214550 “LOYALTY PARTNERS”, with priority from 4.8.2005, registered in classes 35, 36 and 42.

The Respondent has a 100% owned subsidiary in the Czech Republic called Loyalty partners CZ s.r.o., with ID No. 272 34 550, and registered offices at Korunní 810/104, 101 00 Prague 10 –Vinohrady, Czech Republic. It has been registered under this name since 8.12.2006.

To the Complainant’s knowledge the Respondent has no other formal rights in the EU or elsewhere (based on a search of OHIM and WIPO databases of trade marks).

Evidence:
o Extracts from the trademarks register - Respondents trademarks [Exhibit 7]
o Extracts from the companies register with a translation - Respondent [Exhibit 8]
o Extract from the Respondent’s website [Exhibit 9]
o Printout of the Respondent’s website WHOIS information [Exhibit 10]
o Detail of the Registrar - CSL Computer Service Langenbach GmbH doing business as JOKER.com [Exhibit 11]

- LEGAL GROUNDS -

-- DOMAIN NAME IS CONFUSINGLY SIMILAR --

The domain name < loyaltypartners.com > is confusingly similar to the Complainant's prior rights in the sign "Loyalty Partner" (domain name, trade marks, trade name). This is apparent when both domain and trademarks are placed side by side
loyaltypartner
loyaltypartners.com

The .com suffix is irrelevant when comparing the signs [see in particular: WIPO case no. D2006-0793 of (22 Aug 2006) and WIPO case no. D2001-0252 of (9 Apr 2001), WIPO case no. D2002-1064 of (20 Jan 2003)].

The only difference is thus the letter 's' at the end of the sign. This is insufficient to distinguish the signs.

loyaltypartner
loyaltypartners

--- MISSPELLING/TYPOSQUATTING ----

The difference between the signs is only in one letter: "s". This is located at the end of the sign. The Complainant is of the opinion that this is an inconsequential change. The average consumer/website visitor, whose domain recollection is far from perfect, shall be likely to use the plural version of the sign "LOYALTYPARTNER".

The addition of the "plural 's'" has been recognised as infringing trademark rights under the UDRP in the past. In particular see UDRP decisions: WIPO decision No. D2000-0802 [itoyota.com vs. itoyotas.com]; WIPO decision No. D2006-1217 of 6 Dec 2006 [innovativemerchantsolution.com vs. "INNOVATIVE MERCHANT SOLUTIONS"]; WIPO decision No. NAF case No FA94384 of 7 Jul 2000 [ethnicgroceries vs. "ETHNIC GROCERIES"].

Thus in this case the internet user is likely to mistype loyaltypartner.com as loyaltypartners.com. Since the services offered are identical it may be some time before the error is recognised, but it may well not be recognised and the Complainant shall lose the business of the customer.

--- PHONETICALLY SIMILAR ---

It is apparent that the trademarks and the domain are phonetically similar. The only distinguishing feature is the plural 's' at the end in the case of the domain. This is however insufficient to ensure that the average internet user in not confused. Consumers shall not in their mind differentiate between the plural and singular versions. They shall then recall one or the other, which may cause confusion.

--- OPTICAL SIMILARITY ---

The visual similarity is clear when the domain and the trademarks are juxtaposed:

LOYALTYPARTNER
LOYALTYPARTNERS

The grammatically functional 's' at the end is ignored by consumers as insufficiently important. Where the consumer/visitor shall not have the benefit of comparing the signs side by side, then due to an imperfect recollection of the Complainant's sign, the consumer may not appreciate that the Respondent's website is different.

--- CONCEPTUAL/INTELLECTUAL SIMILARITY ---

The trademark LOYALTYPARTNER, creates in the average user's mind an image of a partner (business partner) who handles/advises/provides/ensures/guarantees loyalty. More is not apparent to the average user. The idea is to convince the customer/user that the trademark owner is its partner, someone who can assist it. For repeat customers they shall understand that loyalty refers to loyalty of their own customers.

The domain registered by the Respondent has identical effect on the consumers' minds. The only difference is that the image created shall be of the domain holder being a company, whose members shall act as its partners, (rather than the company as a whole being referred to as a single partner).

Conceptual similarity is obvious; both domain and trademarks create a similar image. Furthermore the slight difference in the images created cannot effectively distinguish between the signs.

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The domain is confusingly similar to the trademarks, trade names and domain name of the Complainant. The phonetic, optical and conceptual similarity are such that the consumer/customer/internet user is going to be confused as to the provider of the services. This confusion shall not be dispelled by the minor difference in adding the plural 's' to the domain name.

-- THE RESPONDENT DOES NOT HAVE ANY RIGHT OR LEGITIMATE INTEREST IN THE DOMAIN NAME --

While the Respondent owns a Slovak national trademark and company name, this does not have priority over the Complainant's trademark and trade/company name rights.

--- DIVERSION OF CONSUMERS/TRADEMARK DILUTION ---

The domain loyaltypartners.com, diverts customers especially potential customers from the Complainant's genuine website loyaltypartner.com.

Repeat customers shall be confused, at least for a while, why the Complainant has changed its website design and may well be confused why it has shifted its base to Slovakia and the Czech Republic. While their error may be short-lived it need not be, as this type of outsourcing is common, especially with German companies often move east into cheaper countries.

New customers may never suspect they have visited the website of an entity other than the Complainant.

The effect is that customers are in effect diverted from the Complainant who has prior trademark domain and trade name rights, to the Respondent. The Respondent, being the smaller, newer company, shall then unduly benefit from the effort the Complainant put into promotion of its name and the reputation/goodwill associated with it. This parasitic behaviour should not be permitted to continue. Most importantly it is in the interest of consumers that competitors are distinguishable.

Furthermore the Complainant's trademark rights, especially its good reputation and goodwill, shall be diluted, as the Respondent's services proved to be inadequate in areas, and the customers spread this information, the Complainant's name and reputation shall be also damaged. Its trademark strength shall be diluted.

--- COMPETITOR'S SITES ---

The domain holder is in exactly the same business as the Complainant (although it does not appear to be as successful.). The domain loyaltypartners.com is thus displaying a competitor's site. The Complainant's customers are likely to be in certain cases diverted and the Respondent shall gain unfair custom at the expense of the Complainant, who has prior rights.

-- BAD FAITH --

--- REGISTRATION IN BAD FAITH, USE IN BAD FAITH ---

The Complainant is convinced that the domain < loyaltypartners.com > had been registered in bad faith and is being used in bad faith. At the time of registration/maintenance/renewal the Respondent knew of the existence of the well-known trademarks of the Complainant and wished to capitalise on the Complainant's goodwill and reputation by diverting some of its customers to itself, trading off the Complainant's rights.

The domain was registered when the domain name, the trade name, and the well-known trademarks LOYALTY PARTNER existed (2003).

At the time of registration of the domain in 2003, the Complainant's trademark was well known in the industry, it being a leader in multi-field/multi-business customer loyalty schemes with major customers.

The domain was renewed as recently as April 2010. At that time a whole family of the Complainant's trademarks existed, the domain loyaltypartner.com was valid and the trade name Loyalty Partner used widely.

The similarity of the Respondent's domain and the domain, trademarks and trade name of the Complainant is such that bad faith is clearly apparent. The registration took place with intent to appropriate the Complainant's customers. The Respondent's domain in facts is so similar that it may appear to customers that there is some official connection between the Respondent and the Complainant, such as a licence agreement, joint ownership, etc.

As the Complainant's domain and trademarks and trade/company name are only different in one letter, the domain holder is relying on the customers/users to visit its website, by mistake, because due to their imperfect recollection of the Complainant's name, the users shall type the plural of the Complainant's trade name.

---- CONSTRUCTIVE KNOWLEDGE/PRIOR KNOWLEDGE OF POTENTIAL RIGHTS ----

The Complainant maintains that the Respondent did in fact know of the Complainant's rights. Should the Panel find this to not have been the case, then the Respondent had at least constructive knowledge of the Complainant's rights.

The Complainant was highly active in the field of loyalty programmes/professional customer management since 1998. The Complainant itself helped create the field of professional customer management, which did not restrict itself to a single field, but provided multi-partner support, where clients of the Complainant, share data about their customers in a synergistic ways.
The complainant had a registered gTLD domain, a registered trade name rights and registered trademarks. These were published published in the trademark, g TLD whois domain register and the commercial registers. There were also numerous newspaper reports and industry reports mentioning the Complainant published at the time. The Respondent thus had constructive knowledge of the existence of the Complainant's rights. The Respondent ought to have known of the Complainant's existence because it is expected of prudent and reasonable businessmen that they shall check the trademark, domain and commercial registers for conflicting rights.

Again the similarity between the Complainant's rights and the Respondent's domain is such that actual bad faith, i.e. knowledge is more likely. [See in particular: EXPEDIA v. xpediatravel.com – WIPO case no. D2000-0137 (18 Apr 2000); KEVIN GARNETT v. kevingarnett.com – NAF case no. FA128073 (21 Nov 2002); MAERICA ONLINE v. americanonline.net and americanonline.com – NAF Case no. FA93679 (16 Mar 2000); and PFIZER v. pfiser.com – WIPO case no D2002-0409 (3 Jul 2002).

--- ATTRACTING INTERNET USERS FOR COMMERCIAL GAIN BY CREATING A LIKELIHOOD OF CONFUSION WITH THE COMPLAINANT ---

As the domain holder is active in the same business as the Complainant, they are direct competitors. The choice of a confusingly similar domain was intentional. In previous UDRP cases where the respondent was found to operate in the same business and the complainant (which is no doubt the case here) and register a sign of the complainant this was found to be in bad faith (see in particular: SOUTHERN EXPOSURE v. southernexposure.net – NAF Case No. FA94964 (18 Jul 2000).)

*** REMEDIES ***

For all of the above reasons the Complainant requests that the Panel order the Respondent, via its registrar to transfer the domain < loyaltypartners.com > to the Complainant (via its registrar).

On behalf of Loyalty Partner GmbH

JUDr. Andrea Považanová

PARTIES CONTENTIONS

Respondent has not filed a compliant response, as its Response was submitted as a blank form.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has not shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

As Complainant has failed to demonstrate that the second requirement is fulfilled, the Panel shall not examine Complainant’s contentions with regard to registration and use in bad faith.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”
Paragraph 4(a) of the Policy lists three elements that Complainant must prove to merit a finding that the domain name registered by the Respondent be transferred to the Complainant:

A) the domain name is identical or confusingly similar to a trademark or service mark (‘mark’) in which the Complainant has rights; and
B) the Respondent has no rights or legitimate interests in respect of the domain name; and

C) the domain name has been registered and is being used in bad faith.

A) Identical or confusingly similar
The Complainant has argued that the Domain Name is confusingly similar to its trade marks. The Panel finds that the (dominant word element of) Complainant's trade marks and the Domain Name are very similar as they only differ because the Domain Name has an additional 's' at the end. The Complainant has therefore shown, to the satisfaction of the Panel, that the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

B) No rights or legitimate interest
The Complainant has argued that the Respondent does not have any right or legitimate interest in the Domain Name. In this respect, it has put forward that although the Respondent owns a Slovak national trade mark and company name, this does not have priority over Complainant's trademarks and company name rights. It has further argued that the Domain Name diverts potential customers from Complainant who has a prior trademark, domain and trade name rights, because new customers may not suspect that they have visited the website of Respondent instead of Complainant's website. The Respondent, as a smaller and newer company, shall therefore unduly benefit from the effort the Complainant put into the promotion of its name and the reputation and goodwill associated with it – thus states Complainant. Finally, Complainant argues that its trademark rights shall be diluted.

The Panel finds that Complainant showed evidence of both Complainant and Respondent owning trade mark rights in device marks "Loyalty Partner" and "Loyalty Partners", respectively under national and/or Community law. Complainant claims that its older trade mark rights should prevail over Respondent's younger trade mark and/or trade name rights with respect to the Domain Name. However the Panel observes that the Rules are not designed to decide on trade mark conflicts.

As the general principle is that domain names are registered on a first come, first serve basis, and considering the fact that Complainant acknowledged that Respondent has a valid trade mark of which the dominant word element is identical to the Domain Name, the Panel finds that Complainant has failed to demonstrate that the Respondent does not have any rights or legitimate interest in the Domain Name within the meaning of paragraph 4(a)(ii)of the Policy.

C) Bad faith
As Complainant has failed to demonstrate that the second requirement is fulfilled, the Panel shall not examine Complainant's contentions with regard to registration and use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **LOYALTYPARTNERS.COM**: Remaining with the Respondent

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2010-10-13

Publish the Decision