Decision for dispute CAC-UDRP-100269

Case number	CAC-UDRP-100269
Time of filing	2011-07-01 18:33:44
Domain names	mastercarder.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	MasterCard International Incorporated

Complainant representative

Organization	Partridge IP Law P.C.

Respondent

Name	A.I. Sergeyev

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings.

IDENTIFICATION OF RIGHTS

The Complainant owns numerous U.S. trademark registrations for its MASTERCARD mark. In addition, MasterCard owns over 100 U.S. registrations and applications for other marks incorporating the term MASTERCARD. Lastly, MasterCard owns numerous registrations in Russia. Examples of Complainant´s trademarks:

US trademark registration for the word MASTERCARD No. 2212783 with a registration date of December 22, 1998.

Russian combined trademark registration incorporating the term MASTERCARD No. 165891 with a registration date of July 17, 1998.

FACTUAL BACKGROUND

The Complainant is a very well-known international organisation providing financial services and payment and credit cards under the name MasterCard International Incorporated. Part of its business name is also used as a trademark and the Complainant owns numerous U.S. trademarks registrations for its MASTERCARD mark. In addition, Master Card owns over 100 U.S. registrations and applications for other marks incorporating the MASTERCARD. Lastly, MasterCard owns numerous registrations in Russia.

The Respondent has registered his domain name “mastercarder.com” and uses it for its own business.

The Complainant is an owner of a well-known trade mark MasterCard which is used worldwide for financial services.
The main reason for a transfer of the trademark to the Complainant is that disputed domain name fully incorporates the Complainant’s mark “mastercard”. Second, the name “mastercarder” used by the Respondent and his domain name and the complainant’s trade mark and business name “mastercard” differs only by the grammatical suffix “er”.

It is therefore clear that the disputed domain name is confusingly similar to the trade mark of the Complainant; The Respondent has no right or legitimate interest with respect to the domain name and the domain name has been registered and is being used in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown 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).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, 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

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

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.

Change of the language

The panel is of the opinion that the request of the Complainant to change the language of the proceedings is justified in this case.

Based on the evidence submitted by the Complainant, the <mastercarder.com> website operated in English before and/or at the time of filing of Complaint. In addition, the term <mastercarder.com> is an English word. The Panel concludes that the Respondent is likely to have sufficient command in English language.

Moreover, the UDRP provider tried by all means to communicate the complaint to the Respondent (the notices being sent in both English and Russian), however, without success. All emails and postal notification returned undelivered. In view of the panel is would be too formalistic to deny a request for a change of language of one party if the language issue cannot play a role due to the non–receipt of the complaint by the other party.

Therefore, the request to change the language of the proceedings is granted.

PRINCIPAL REASONS FOR THE DECISION

1. The main issues under the Policy are whether:

i. the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
ii. the Respondent has no rights or legitimate interests with respect to the domain name; and
iii. the domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning disputed domain name, namely the WHOIS databases. It has to be stressed that the Panellist is fluent in Russian language.

3. The Rules for Uniform Domain Name Dispute Resolution Policy clearly says in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant has clearly proven that he is a long standing and successful company in the Internet space. It is clear that his trademarks and domain names “mastercard” are well known worldwide.

Domain name to be identical or confusingly similar

b) It is also clear and proven by the disputed domain wording that there is only a slight amendment of the Complainant’s trademark (“er”). It has to be confirmed by the Panel that the addition of such a non-distinctive, descriptive or generic term does not change the overall impression of a mark or avoid confusion.

Respondent not having rights or legitimate interest with respect to the disputed domain name

c) It has to be stressed that it was proven that there are no fair rights of the Respondent to the disputed domain name. The Respondent is not generally known by the domain name, and has not acquired any trademark or service mark rights in the name or mark.
The domain name was registered with an intention to attract customers of an other well known domain name/registered trademark holder. Therefore there cannot be seen any legitimate interest of the Respondent.

Domain name has been registered and is used in bad faith

d) From the IP Law perspective, it is clear that the trademarks incorporating the term “mastercard” were used by the Complainant long time before the disputed domain name was registered and used. It is therefore concluded that the domain name was registered with an intention to attract customers of an other well known domain name/registered trademark holder.

e) Based on the evidence submitted, the domain name was offered for sale. It is therefore clear that the Respondent registered the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MASTERCARDER.COM**: Transferred

PANELLISTS

Name	**Vít Horáček**

DATE OF PANEL DECISION 2011-08-29

Publish the Decision