Decision for dispute CAC-UDRP-100951

Case number	CAC-UDRP-100951
Time of filing	2015-03-23 10:35:57
Domain names	worldwideperfumes.com,

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Worldwide Perfumes LLC

Complainant representative

Organization	n/a

Respondent

Name	Eduardo Vargas

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings related to the disputed domain name

IDENTIFICATION OF RIGHTS

The Complainant relies on its unregistered trademark "WORLDWIDE PERFUMES".

FACTUAL BACKGROUND

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

The Complainant is Worldwide Perfumes, LLC having a principal place of business at 11400 N.W., 34th Street, Doral, FL 33178. The Complainant states that it has rights in the unregistered trademark “WORLDWIDE PERFUMES”. This is because the Complainant actively uses the trademark “WORLDWIDE PERFUMES” in commerce.
In the Complainant's view the following facts demonstrate that the trademark “WORLDWIDE PERFUMES” is actively used in commerce:

(i) the name of the Complainant contains the trademark “worldwide perfumes”;
(ii) the Complainant regularly issues invoices bearing the unregistered trademark “worldwide perfumes”;
(iii) a representative of the Complainant uses a business card bearing the trademark “worldwide perfumes”;
(iv) the name of the Complainant, which contains the trademark “worldwide perfumes”, is mentioned on numerous Internet

websites;
(v) information about the Complainant is available at the website of the Florida Department of State - Division of Corporations;
(vi) the Complainant owns the domain name worldwideperfumesllc.com.

On the other hand, according to the Complainant's statement, the Respondent has no rights or legitimate interests in respect of the domain name in dispute since the website associated with said domain name does not mention the trademark “worldwide perfumes” at all.

In addition, the Respondent is not making a legitimate non-commercial or fair use of the contested domain name. Actually, in the Complainant's view, the Respondent has not been using the domain name since it resolves to a parking page and such use is not a bona fide use.

Furthermore, the Complainant assumes that the domain name in dispute has been registered and is being used in bad faith. In particular the Respondent was aware or ought to have been aware of the existence of the unregistered trademark of the Complainant since there were numerous information on the internet related to the Complainant's unregistered trademark. This knowledge at the time of registration proves that the disputed domain name was registered in bad faith.

Finally, in the Complainant's view, by linking the domain name to a Complainant’s competitor, the Respondent is using the domain name in bad faith. The Complainant and the website www.wholesale-perfume.com are both in the business of selling perfumes. The purpose of the redirection to the competitor’s website clearly was to attract Internet users to the competitor's website, for profit, based on their confusing the domain name with the unregistered trademark of the Complainant.

In consideration of the above indicated circumstances the Complainant requests the panelist to transfer the domain name to the Complainant.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

There are two conditions which must be satisfied to meet the first element of paragraph 4 (a) of the Policy:

a) a Complainant must establish that he has rights in a particular mark;
b) a Complainant must establish that the domain name in dispute is identical or confusingly similar to that mark.

In the case at hand it is clear that the second condition would be easily reached should the Complainant establish it has rights in the mark "WORLDWIDE PERFUMES".

Therefore, the first condition must be carefully examined as the Complainant does not own any trademark registration for the mark WORLDWIDE PERFUMES. In the Panel's view there are at least two crucial elements in order to exclude that the Complainant has rights in a particular (even unregistered) trademark.

1 - Even if the Complainant declares that it is the owner of the domain name <worldwideperfumesllc.com> said domain name is not currently linked with an active website and it means that the Complainant's domain name is not used in a way to support a finding that Complainant has rights in an unregistered trademark. In addition, the Complainant did not show any use of the domain <worldwideperfumesllc.com> and it leads to the conclusion that said domain name has never been used. The fact that the Complainant uses the email address andrea@worldwideperfumesllc is not sufficient to assume that the domain name <worldwideperfumesllc.com> is used as a trademark.

2 - According to "Wipo Overview 2.0", in order to successfully assert unregistered trademark rights, the Complainant must

show that the name has become a distinctive identifier associated with the Complainant or its goods or services. Relevant evidence of such "secondary meaning" includes length and amount of sales under the trademark, the nature and extent of advertising, consumer surveys and media recognition. In the case at hand the Complainant did not explain the legal source of his unregistered trademark rights and, in addition, the Complainant failed to submit evidence which clearly prove a long and continuous use of the mark. Furthermore, according to Panel's view, it is almost impossible to associate a long and continuous use to the unregistered mark WORLDWIDE PERFUMES since, according to the Complainant's submitted evidence, the first use was only in January 2015. In consideration of the above the Panel believes that the above referred "secondary meaning" has not been reached.

As the first element of paragraph 4(a) of the Policy has not been met, the other elements need no further discussion.

NO RIGHTS OR LEGITIMATE INTERESTS

The element of paragraph 4(a)(ii) of the Policy need not to be discussed.

BAD FAITH

The element of paragraph 4(a)(iii) of the Policy need not to be discussed.

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

The Complainant did not meet the requirements of paragraph 4(a) of the Policy

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

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

PANELLISTS

Name	**Avv. Guido Maffei**

DATE OF PANEL DECISION 2015-04-30

Publish the Decision