Decision for dispute CAC-UDRP-101022

Case number	**CAC-UDRP-101022**
Time of filing	**2015-07-28 08:32:07**
Domain names	**nationalcarhires.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Vanguard Trademark Holdings USA LLC**

Complainant representative

Organization	**Harness, Dickey & Pierce, PLC**

Respondent

Name	**Ian kay**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complaint is filed by Vanguard Trademark Holdings USA LLC., who is the registered owner of at least the following trademarks:

European Community registrations for the NATIONAL and NATIONAL CAR RENTAL marks, and in particular, Reg. No. 000190454 issued December 9, 1998, NATIONAL CAR RENTAL & Design in International Class 39 for “automobile rental and reservation services”; and Reg. No. 000190355 issued December 9, 1998 NATIONAL & Design in International Class 39 for “automobile rental and reservation services”;

South Africa registrations, and in particular, Reg. No. 95/13197 issued October 4, 1995 NATIONAL & Design in International Class 39 for “Automobile rental and reservation services”; and Reg. No. 84/8218 issued September 13, 1984;

NATIONAL CAR RENTAL & Design in International Class 39 for “leasing and rental of automobiles and trucks, services connected with or ancillary to the aforegoing included in this class”;

Complainant, Vanguard Trademark Holdings USA LLC, is also the owner of the NATIONAL and NATIONAL CAR RENTAL

marks (“NATIONAL marks”) which it licenses to National Car Rental operating companies. It operates in the United States, Canada, Mexico, the Caribbean, Latin America, Africa (including South Africa), Asia, and the Pacific Rim. Complainant’s licensee operates an online car rental site at nationalcar.com.

Copies the registered trademarks mentioned above have been produced by the Complainant.

The Respondent is in default and therefore, this Panel has not been provided any information regarding any rights of the Respondent.

FACTUAL BACKGROUND

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

The Complainant has long standing and well-recognized rights and goodwill in its NATIONAL and NATIONAL CAR RENTAL marks in connection with car rental services. Complainant licenses its trademarks to National Car Rental operating companies. Activities were started in 1948 and at present, NATIONAL serves the daily rental needs of the frequent airport business traveller throughout the United States, Canada, Mexico, the Caribbean, Latin America, Africa (including South Africa), Asia, and the Pacific Rim.

The Respondent appears to operate an online car rental business mostly focused on South Africa.

The Complainant contends that the disputed domain name is confusingly similar with the registered trademarks of Complainant since the disputed domain name fully incorporates Complainant’s NATIONAL mark, merely adding a descriptive term for Complainant’s business, “car hires,” and the generic top level domain identifier, “.com”. The disputed domain name is also confusingly similar with the NATIONAL CAR RENTAL mark where the term RENTAL was replaced with “hires”. According to well-established precedents, the addition of a generic top level domain identifier is also insufficient to distinguish the <nationalcarhires.com> domain name from Complainant’s NATIONAL marks.

Complainant further states that the Respondent has no rights or legitimate interests in the <nationalcarhires.com> domain name. The <nationalcarhires.com> domain name resolved to a web page purporting to offer the ability to book online reservations for a car rental. In light of the long-standing use and registration of the NATIONAL marks by the Complainant, the Respondent cannot have any legitimate rights in the <nationalcarhires.com> domain name in connection with a site that purports to offer services directly competitive with those of the Complainant.

According to the Complainant, previous panels have found that, in the absence of evidence submitted by a respondent, the WHOIS record is the sole piece of relevant evidence when determining what a respondent is commonly known as. There is nothing in the WHOIS record that would indicate the Respondent is or is commonly known as “National Car Hires.” Without evidence on behalf of the Respondent demonstrating that it is actually known as or doing business as “National Car Hires,” it can be found to never have been known by that name.

Once the Complainant makes a prima facie case that the Respondent lacks rights and legitimate interests in the <nationalcarhires.com> domain name under paragraph 4(a)(ii) of the Policy, the burden shifts to the Respondent to show it does have rights or legitimate interests.

As to registration and use in bad faith, the Complainant contends that the facts of record support a finding that the Respondent both registered and is using the domain name at issue in bad faith. Respondent’s registration of a domain name that is confusingly similar to Complainant’s NATIONAL marks for a web page that attempts to attract Internet users to Respondent’s web site based on that confusing similarity evidences a clear intent to trade upon the goodwill associated with Complainant’s NATIONAL marks.

The web page to which the <nationalcarhires.com> domain name resolves appears to offer services that are competitive with Complainant’s business. Many Internet visitors to Respondent’s web page at <nationalcarhires.com> will either not realize that they have been unwittingly directed to a web site that has no affiliation to National Car Rental or not care that

they are not at the “official” National Car Rental web site and will follow the links provided on the <nationalcarhires.com> web site, causing damage to the Complainant through loss of business.

In summary, and according to the Complainant, it cannot be disputed that the Complainant has long standing and well-recognized rights and goodwill in its NATIONAL and NATIONAL CAR RENTAL marks in connection with car rental services. The <nationalcarhires.com> domain name is confusingly similar to Complainant’s NATIONAL and NATIONAL CAR RENTAL marks. The Respondent has no legitimate rights in the <nationalcarhires.com> domain name. The Respondent has merely registered the <nationalcarhires.com> domain name to capitalize on the goodwill that the Complainant has developed in its NATIONAL and NATIONAL CAR RENTAL marks to drive Internet traffic inappropriately to Respondent’s web site.

The disputed domain name was registered on December 30, 2010.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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).

The domain name reproduces entirely Complainant's registered mark ("NATIONAL") and adds or replaces descriptive terms to it ("CAR" and "HIRES").

“A general rule under [ICANN] Policy 4¶(a)(1) is that a domain name is confusingly similar to a third-party mark where the domain name fully incorporates the mark and simply adds additional words that correspond to the goods or services offered by the third party under the mark.” Sony Kabushiki Kaisha v. 0-0 Adult Video Corp., FA 475214 (Nat. Arb. Forum June 27, 2005). See also Kohler Co. v. Curley, FA 890812 (Nat. Arb. Forum Mar. 5, 2007) (finding confusing similarity where <kohlerbaths.com>, the disputed domain name, contained the complainant’s mark in its entirety adding “the descriptive term ‘baths,’ which is an obvious allusion to complainant’s business.”);

Therefore, it is clear that the dispute domain name, <nationalcarhires.com> is confusingly similar to Complainants’ marks under 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).

The Respondent appears to operate a website at the disputed domain name related to car rentals. While the offers are primarily focused on South Africa, the website appears to also be directed to other nationalities (Dutch, Russian and Swiss at least). Car rental orders in locations outside South Africa also appear to be available.

Since the Respondent is in default, the Panel does not have the benefit of a response. As a result, the Panel can only make a decision based on the complaint and the content of the website located at the disputed domain name. Based on the website, the Panel finds that the Respondent is not making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue, since the Respondent is carrying out commercial activities rendering services for a fee. Absent a Response and taking into account arguments in the Complaint, the Panel also finds that Respondent is not commonly known by the domain name.

Regarding whether the Respondent, before having any notice of the dispute, has been using the domain name in connection with a bona fide offering of goods or services, this Panel finds that there cannot be any 'bona fide' when the Respondent is using a name that is confusingly similar with a trademark, for the same type of services. Following WIPO Case No. D2002-0946 Philip Morris Incorporated v. Alex Tsypkin, the Panel is satisfied the presentation of Respondent’s website is likely to

mislead Internet users into believing the site is operated or endorsed by or affiliated with Complainant. There is no disclaimer or other warning alerting internet users that the website and business hosted therein is not connected to the Complainant. Further, the website includes the logos of Complainant's competitors, suggesting that their services could also be ordered from that website which amounts to trading on the fame of Complainant's mark to sell, inter alia, the services of Complainant's competitors. Use which intentionally trades on the fame of another cannot constitute a bona fide offering of goods or services: Madonna Ciccone, p/k/a Madonna v. Dan Parisi and <madonna.com>, WIPO case D2000-0847. The Respondent cannot plausibly argue that he did not intentionally adopt the disputed domain name so as to benefit from the goodwill of the Complainant's mark.

Absent any other explanation from the Respondent, the Panel is satisfied that the Respondent has no right or legitimate interest to the domain name.

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).

The Panel agrees with the Complainant that this appears to be a classic case of cybersquatting whereby the Respondent is deliberately using a domain name that is confusingly similar to registered marks to attract Internet users to its web site, by creating a likelihood of confusion with those registered marks as to the source, sponsorship, affiliation or endorsement of its web site. Respondent's registration of a domain name that is confusingly similar to Complainant's NATIONAL marks, specially taking into account their long standing and well-recognized rights and goodwill, for a web page that attempts to attract Internet users to Respondent's web site based on that confusing similarity evidences a clear intent to trade upon the goodwill associated with Complainant's NATIONAL marks. See Red Hat, Inc. v. Haecke, FA 726010 (Nat. Arb. Forum July 24, 2006) (finding that the respondent engaged in bad faith registration and use pursuant to Policy ¶ 4(b)(iii) by using the disputed domain names to operate a commercial search engine with links to the products of the complainant and to complainant's competitors, as well as by diverting Internet users to several other domain names).

From the above it is clear that Respondent's registration and use of the <nationalcarhires.com> domain name falls squarely within the parameters of ICANN paragraph 4(b)(iv) 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.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain name <nationalcarhires.com> is confusingly similar to the Complainant's registered trademarks.

2. The Panel finds that the Respondent is not using the domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

3. The Complainants also proved that the Respondent deliberately registered and used the domain name that are confusingly similar to Complainants' marks to attract, for commercial gain, Internet users to its web sites, by creating a likelihood of confusion with Complainants' marks as to the source, sponsorship, affiliation or endorsement of its website and the services offered at such website.

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NATIONALCARHIRES.COM**: Transferred

PANELLISTS

Name	**Jose Checa**

DATE OF PANEL DECISION 2015-09-12

Publish the Decision