Decision for dispute CAC-UDRP-101208

Case number	CAC-UDRP-101208
Time of filing	2016-05-12 13:44:56
Domain names	alamo.gift, alamo.science, alamo.help, alamo.space, alamo.ren

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Vanguard Trademark Holdings USA, LLC

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Organization	Huang Jia Lin c/o Huang Jia Lin

OTHER LEGAL PROCEEDINGS

None that the Panel has been made aware of.

IDENTIFICATION OF RIGHTS

The Complainant has supplied evidence that it is the owner of the following trade mark rights in the United States:

Registration No. 1,097,722 issued on 25 July 1978
ALAMO in International Class 39 for "automotive renting and leasing services"

Registration No. 2,427,040 issued on 6 February 2001
ALAMO & Design in International Class 39 for "automotive renting and leasing services"

Registration No. 2,427,041 issued on 6 February 2001
ALAMO & Design in International Class 39 for "automotive renting and leasing services"

Registration No. 4,462,684 issued on 7 January 2014
ALAMO & Design in International Class 39 for "reservation services for the rental and leasing of vehicles"

Registration No. 4,462,683 issued on 7 January 2014

ALAMO in International Class 39 for "reservation services for the rental and leasing of vehicles"

FACTUAL BACKGROUND

The Complainant licences the trade mark registrations listed above to Alamo Rent A Car and other operating entities ("Alamo"). Alamo was started in 1974 and is an internationally recognized car rental brand throughout the United States, Canada, Mexico, the Caribbean, Latin America, Asia and the Pacific Rim. It is also the largest car rental provider for international travellers visiting North America. Its main website is at www.alamo.com.

Nothing is known about the Respondent, apart from the fact that it is based in China.

The disputed domain names were registered on 16 March 2016. They are being used to point to websites containing sponsored links to websites offering car rental services, including those of the Complainant and its competitors.

PARTIES CONTENTIONS

Parties' Contentions

Complainant

Procedural Factors

The Complainant requests that the language of the proceedings be English and argues that the Respondent appears to be very familiar with the English language for the following reasons:

- the disputed domain names resolve to websites exclusively in English;
- all of the links on such websites are in English;
- the websites are directed to English speakers;
- "Alamo" is an English word of Spanish derivation and has no meaning in Chinese; and
- Alamo Rent A Car (targeted on such websites) is a US-based company.

The Complainant argues that, under the circumstances, requiring the Complainant to incur the cost of translation would be unduly onerous and unnecessary.

Identical or confusingly similar

The Complainant evidences the five United States trade mark rights listed in the "Identification of Rights" section above. It also states that it has registered its ALAMO trade mark in many countries throughout the world, including in China (where the Respondent resides), where it owns the following trade mark rights:

Registration No. 769766 issued on 14 October 1994
ALAMO in International Class 39

Registration No. 8060720 issued on 14 May 2011
ALAMO in International Class 39

However, the Complainant points out that the Policy does not require complainants to show registration in any particular country, as long as they can establish rights in one jurisdiction.

The Complainant argues that the disputed domain names are confusingly similar to the Complainant’s registered ALAMO trade mark because they fully incorporate and are identical to it, merely adding the generic Top Level Domains, ".gift," ".science," ".help," ".space," and ".ren".

The Complainant states that the incorporation of a trade mark in its entirety into a domain name is sufficient to establish that the domain name is identical or confusingly similar to a registered trade mark. In addition, the Complainant argues that the addition of a generic Top Level Domain is insufficient to distinguish the disputed domain names from the Complainant's ALAMO trade mark. The Complainant stresses that its ALAMO trade mark registrations significantly pre-date the registration of the disputed domain names, sometimes by many years.

No rights or legitimate interests

The Complainant supplies evidence that, on 29 March 2016, the disputed domain names were pointing to websites containing lists of "Related Links". Such links consisted of links to websites offering car rental services, including those of the Complainant and its competitors.

For example, the list of "Related Links" on the website to which <alamo.gift> was pointing on 29 March 2016 included:

Car Rental For Alamo Car Hire Miami Airport
Cheap Car Rental Companies
Alamo Miami
Car Rental at Lax
Alamo Car Rental Coupon
Miami Luxury Car Rental
Alamo Drafthouse Cinema
Alamo Orlando
Car Rental

The Complainant also lists the links on the websites corresponding to the other four disputed domain names on 29 March 2016.

In light of the long-standing use and registration of the ALAMO trade mark by the Complainant, the Complainant asserts that the Respondent cannot have any legitimate rights in the disputed domain names in connection with websites that serve merely to drive internet traffic to websites offering car rental services, including those of the Complainant and its competitors.

The Complainant points out that the WHOIS records list "Huang Jia Lin" as the Name and "Huang Jia Lin" as the Organization for the Registrant of the disputed domain names. The websites to which they are pointing give no indication that the Respondent is known as, operating a business as, or advertising as "Alamo." The Complainant underlines that previous panels have found that, in the absence of evidence submitted by the respondent, the WHOIS record is the sole piece of relevant evidence when determining what a respondent is commonly known as. In this regard, the Complainant adds that there is nothing in the WHOIS records or the corresponding websites that would indicate that the Respondent is, or is commonly known as, "Alamo."

The Complainant argues that these facts suggest that the Respondent is not known as or operating as "Alamo," but instead is attempting to use the goodwill generated by the ALAMO trade mark to drive internet traffic to its websites through the use of confusingly similar domain names. The Complainant has not authorized the Respondent to use its ALAMO trade mark in connection with car rental services or any other goods or services, or to apply for any domain name incorporating the ALAMO trade mark.

In addition, the Complainant argues that the Respondent is clearly not making any legitimate noncommercial or fair use of the disputed domain names. The Complainant asserts that any claim in that regard is easily dismissed because the corresponding websites are all of a generic type commonly used by domain name owners seeking to monetize their domain names through "click-through" fees.

The Complainant points out that an entity with legitimate plans for using a domain name in connection with a bona fide

offering of goods or services would use an under construction page indicating the future use of the domain name. Instead, the Respondent has registered domain names corresponding to the ALAMO trade mark and used them to gain click-through fees by using pay-per-click websites promoting services for which the ALAMO trade mark has been used for many years.

In the Complainant's opinion, it is clear that the Respondent is attempting to use the disputed domain names to drive internet traffic to the Respondent's websites when internet users are trying to reach the Alamo Rent A Car website. As previously indicated, the Complainant's licensee operates an online car rental website at www.alamo.com. The Complainant argues that such use by the Respondent constitutes a lack of rights or legitimate interests in the disputed domain names under the Policy.

The Complainant underlines that, once it makes a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain names, the burden shifts to the Respondent to show that it does have rights or legitimate interests.

Registered and used in bad faith

The Complainant argues that the Respondent's registration of domain names that merely combine the Complainant's ALAMO trade mark with a generic Top Level Domain to attempt to attract internet users to the Respondent's websites evidences a clear intent to trade upon the goodwill associated with the Complainant's ALAMO trade mark. In the Complainant's opinion, the Respondent is deliberately using domain names that are confusingly similar to the Complainant's trade mark to attract, for commercial gain, internet users to its websites, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of its websites and the services offered at such websites.

The Complainant points out that the disputed domain names are pointing to "pay-per-click" websites. In the Complainant's opinion such websites contain online advertising that will provide someone, presumably the Respondent, with revenue from "click-through" fees from internet users. Such business model based upon the use of infringing domain names to attract users to the Respondent's websites is clear evidence that the Respondent has registered and is using the disputed domain names in bad faith.

The Complainant asserts that the Respondent's bad faith is also clearly evident from the fact that the websites to which the disputed domain names are pointing include links to the real Alamo Rent A Car website, and Alamo must pay a click through fee if such links are used.

The Complainant points out that the Respondent may claim ignorance regarding the use being made of the disputed domain names. However, the Complainant argues that, under the Policy, absent a showing of some good faith attempt (prior to receiving the complaint) to stop the inclusion of advertising or links which profit from trading on third-party trade marks, a domain name owner is deemed responsible for content appearing on the websites at the domain names they own. This is true even if the owner is not exercising direct control over such content, for example in the case of advertising links appearing on an "automatically" generated basis, such as may be the case here.

The Complainant asserts that, based on the above, it is clear that the Respondent's registration and use of the disputed domain names falls squarely under the Policy.

Respondent

The Respondent did not respond to the Complaint.

RIGHTS

The Complainant has shown, to the satisfaction of the Panel, that the disputed domain names are confusingly similar to a trade 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 shown, to the satisfaction of the Panel, that the Respondent has no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has shown, to the satisfaction of the Panel, that the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

As far as the language of the proceedings is concerned, Rule 11 states as follows:

"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."

The Complainant has requested that the language of the proceedings should be English for the reasons listed in the Complaint, even though the language of the Registration Agreement may be Chinese. The Panel finds that the Complainant has made convincing arguments, having regard to the circumstances of this case, and thus accepts that the proceedings may be in English.

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

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules states that the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel shall draw such inferences therefrom as appropriate.

In this case the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel is therefore obliged to make its decision on the basis of the factual statements contained in the Complaint and the documents made available by the Complainant to support its contentions.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following for a panel to order a transfer of the domain name(s) at issue:

(i) the domain name registered by the respondent is identical or confusingly similar to a trade mark or service mark in which Complainant has rights; and

(ii) the respondent has no rights or legitimate interests in the domain name; and

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

Taking each of these issues in turn, the Panel decides as follows:

A. Identical or Confusingly Similar

Based on the evidence put forward by the Complainant, the Panel finds that the Complainant has trade mark rights in the term ALAMO.

The Panel notes that all the disputed domain names incorporate the Complainant's ALAMO trade mark in its entirety. It is

widely accepted that the generic Top Level Domain suffix is generally irrelevant for the purpose of assessing identity or confusing similarity between a trade mark and a domain name.

On the basis of these considerations, the Panel finds that the disputed domain names are identical to a trade mark in which the Complainant has rights, in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element that the Complainant must prove is that the Respondent has no rights or legitimate interests in respect of the disputed domain names (Policy, paragraph 4(a)(ii)).

Paragraph 4(c) of the Policy sets out various ways in which a respondent may demonstrate rights or legitimate interests in the domain name(s) at issue, as follows:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Panel has considered the evidence put forward by the Complainant and is of the view that the Complainant has presented a clear prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain names. As a result of its default, the Respondent has failed to rebut that showing.

The Respondent cannot be considered to be making a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy referred to above, given that the disputed domain names are pointing to websites containing sponsored links. Neither can such use be said to be a legitimate non-commercial or fair use of the domain names within the meaning of paragraph 4(c)(iii). Furthermore, no evidence has been supplied that the Respondent is commonly known by the disputed domain names, as referred to at paragraph 4(c)(ii).

Given the above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The third element that the Complainant must prove is that the disputed domain names have been registered and are being used in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy sets out various circumstances which may be treated by the Panel as evidence of the registration and use of a domain name in bad faith, as follows:

"For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-

of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The Panel is satisfied that the Respondent's conduct falls within paragraph 4(b)(iv) of the Policy. By using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website.

In addition, given the Complainant's notoriety, the fact that its trade marks significantly pre-date the registration of the domain names, and the content of the websites to which the domain names are pointing, it is clear that the Respondent registered the domain names in bad faith.

The Panel therefore finds that the disputed domain names have been registered and are being used in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ALAMO.GIFT**: Transferred
2. **ALAMO.SCIENCE**: Transferred
3. **ALAMO.HELP**: Transferred
4. **ALAMO.SPACE**: Transferred
5. **ALAMO.REN**: Transferred

PANELLISTS

Name	**Jane Seager**

DATE OF PANEL DECISION 2016-06-22

Publish the Decision