Decision for dispute CAC-UDRP-101634

Case number	**CAC-UDRP-101634**
Time of filing	**2017-08-08 10:14:46**
Domain names	**letgogifts.win**

Case administrator

Organization	**Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization	**AMBATANA HOLDINGS B.V.**

Complainant representative

Organization	**RiskIQ, Inc**

Respondent

Name	**John Smith**

OTHER LEGAL PROCEEDINGS

In Ambataba Holdings B.V. v. WhoisGuard, Inc., Uniform Rapid Suspension ("URS') Claim Number: FA1707001739009 (decision of 31 July 2017, Forum), the Panel found that the case would require more thorough review than it is possible under the URS Policy. However, paragraph 8.6 of the URS Rules of Procedure states that termination of a URS proceeding is without prejudice to a Complainant to proceed with an action in court of competent jurisdiction or under the Uniform Dispute Resolution Policy ("UDRP").

IDENTIFICATION OF RIGHTS

According to the evidence submitted by the Complainant, the Complainant is the owner of multiple trademarks including the European Union trademark LETGO, filing number 013954532, registration date 18 August 2008.

FACTUAL BACKGROUND

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

According to the information provided, the Complainant develops and markets the LETGO free mobile app ("letgo"). The app is a fast and easy way to buy and sell secondhand stuff in your own neighborhood by chatting instantly and privately over the app with other buyers and sellers. Since its launch in 2015, letgo has been featured in a wide variety of internationally recognized media and publications. By last year, letgo already had 30 million downloads and each month about 17.4 million were using the app on Android or iOS. By the end of 2016, there were already more than 45 million downloads, a third of all

listings were being sold and there were already 20 million monthly active users.

The letgo website is localized to offer the app to users in many different regions in Asia Pacific, Middle East and India, Europe, United States, Canada, Puerto Rico, Latin American and the Carribean.

The disputed domain name was registered on 16 April 2017.

The trademark registrations of the Complainant have been issued prior to the registration of the disputed domain name.

According to the Complainant the disputed domain name is confusing similar to the Complainant's trademark as it contains the trademark LETGO in its entirety.

According to the Complainant, the Respondent has no rights or legitimate interest in the disputed domain name. The Complainant has never licensed or otherwise authorized the Respondent to use its LETGO mark in the disputed domain name, nor does the Respondent have any relationship with the Complainant, including as a reseller, distributor, or a service provider.

According to the evidence submitted by the Complainant starting six days after the disputed domain name was created, letgo users were massively spammed in waves of letgo chat messages sent from fake accounts encouraging them to click through to the disputed domain to receive a prize under the false pretense that it was originating from the Complainant to celebrate its user growth. In the most recent chat spam attack on the letgo user-base between 29 June and 2 July 2017 leading up to the filing of the URS Complaint the disputed domain name was used as a lure in the chat spam message bodies sent through the fake accounts close to 70,000 times. The Complainant received numerous complaints and reports from its user-base regarding the chat spam messages encouraging them to click through to the website to which the disputed domain name resolves under the false pretense of it being a reward originating with, or endorsed or sponsored by the Complainant.

In its very lengthy submissions the Complainant finally asserts that the disputed domain name is also being used in prize scamming activities that divert users to ad networks by deceiving them into thinking they won a prize from one of the apps they use, when any such prizes are at best incentives to provide personal information for commercial gain by third-parties that have nothing to do whatsoever with the apps, which under the ruse of winning a gift from letgo, is a prize scam. Evidence in support of this includes the fact that the Respondent has masked its identity. The Complainant concludes that the use being made by the Respondent of the disputed domain name certainly does not constitute a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

According to the Complainant, the disputed domain name is registered and used in bad faith. According to the Complainant, it has established that on balance, by using <letgogifts.win>, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website. Furthermore, the domain was recently registered on April 16, 2017. In view of the notoriety of the mark demonstrated by the Complainant, the Respondent certainly could have been aware of Complainant’s rights in the mark. From the circumstantial evidence regarding use of the disputed domain name in the chat spam messages to divert users to the disputed domain, and the adoption of a privacy service to shield its contact details in the WhoIs record, there is strong evidence to support the finding that the Respondent did not register and use the disputed domain name in a bona fide manner without intention to trade upon a third party mark. The Complainant submits that the circumstances indicate that the Respondent registered and used the disputed domain name with the Complainant and its trademark rights in mind, in order to derive profit from the likelihood of association with Complainant's mark and to divert its users. According to the Complainant the Respondent provided what appears to be false contact information to the registrar. Specifically, the phone number appears to be invalid. In addition, the postal code N20 5EH does not appear to match the address provided to the registrar as the postal code associated with the address is N20 0DU. The Complainant concludes that the disputed domain name is registered and used in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

Complainant has, to the satisfaction of the Panel, shown the disputed 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

Complainant has, to the satisfaction of the Panel, shown Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

Complainant has, to the satisfaction of the Panel, shown the disputed 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.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15(a) of the Rules for Uniform Domain Name Resolution Policy (“the Rules”) instructs the Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Uniform Domain Name Resolution Policy (“the Policy”), these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires that the complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

(i) the disputed 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 in respect of the disputed domain name; and

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

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

In the opinion of the Panel, the disputed domain name is confusingly similar to the Complainant's LETGO trademarks (Policy, Par. 4 (a)(i)). Many UDRP decisions have found that a disputed domain name is confusingly similar to the Complainant’s trademark where the disputed domain name incorporates the Complainant’s trademark or the principal part thereof in its entirety. The European Union trademark of Complainant predates by many years the registration date of the disputed domain name. The top-level domain “win” and the descriptive and generic addition “gifts” may be disregarded.

In the opinion of the Panel the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name.

Based on the undisputed submissions and evidence provided by the Complainant, the disputed domain name resolves to a website which is used to send chat spam message through the fake accounts to a very substantial number of users. In addition the Respondent did not dispute Complainant’s submission and evidence that the disputed domain name is being used in prize scamming activities. Such use cannot be considered a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name. The Respondent is also not commonly known by the disputed domain name nor has he acquired any trademark rights. The Complainant has not licensed or otherwise permitted the Respondent to use its trademarks or to register the disputed domain name incorporating its marks. The Complainant has no

relationship with the Respondent.

The Respondent did not submit any response. Under these circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name [Policy, Par. 4 (a)(ii)].

The Panel finds that the disputed domain name has been registered and is being used in bad faith [Policy, Par. 4(a)(iii)]. The trademarks of the Complainant have been existing well before the registration of the disputed domain name. The Respondent knew or should have known that the disputed domain name included the Complainant's trademarks. The Panel notes that the use of a privacy service in combination with the provision of incorrect contact information, such as a wrong telephone number and wrong postal code, in combination with facts elaborated above about the spam messages and the prize scamming activities indicates that the Respondent registered the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of the Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, which satisfies the bad faith registration and use requirements of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LETGOGIFTS.WIN**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2017-09-12

Publish the Decision