# Decision for dispute CAC-UDRP-101678

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| Case number | CAC-UDRP-101678 |
| Time of filing | 2017-09-15 12:38:16 |
| Domain names | thenationalrentalcar.com |

## Case administrator

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| Name | Aneta Jelenová (Case admin) |

## Complainant

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| Organization | Vanguard Trademark Holdings USA LLC |

## Complainant representative

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| Organization | Harness, Dickey & Pierce, PLC |

## Respondent

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| Name | Mrs McNulty |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of different trademarks consisting in whole or in part of the word "NATIONAL CAR RENTAL" and "NATIONAL", notably:

Canadian Trade Mark (Word Mark) (no. TMA343651), registered under class 39 with a priority date as of August 12th, 1988;

Canadian Trade Mark (Word Mark) (no. TMA534880), registered under class 39 with a priority date as of October 17th, 2000;

Community Trade Mark (Word Mark) (no. 000190439), registered under class 39 with a priority date as of March 12th, 2003;

Community Trade Mark (Figurative Mark) (no. 000190504), registered under class 39 with a priority date as of August 24th, 2000;

US Trade Mark (Word Mark) (no. 1540913), registered under class 39 with a priority date as of May 23rd, 1989;

US Trade Mark (Word Mark) (no. 1537711), registered under class 39 with a priority date as of May 2nd, 1989.

FACTUAL BACKGROUND

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

The Complainant is the owner of the NATIONAL CAR RENTAL and NATIONAL marks which it licenses to National Car Rental. Founded in 1948, National Car Rental is a premium, internationally recognized brand serving the daily rental needs of the frequent airport business travellers throughout the United States, Canada, Mexico, the Caribbean, Latin America, Africa, Asia and the Pacific Rim. Complainant's licensee operates an online car rental site under the domain names "nationalcar.com" and "nationalrentalcar.com".

The Respondent registered the disputed domain name "thenationalrentalcar.com" on July 14th, 2017. By now the disputed domain name "thenationalrentalcar.com" does not point to any active web page.

The Complainant states that the Respondent is not affiliated with him nor authorized by him in any way, and has no right or legitimate interest in the disputed domain name and he is not related in any way to its business.

The Complainant assumes that the disputed domain name is confusingly similar to its registered trademarks, while the disputed domain name fully incorporates Complainant's "NATIONAL CAR RENTAL", merely reversing the words "car" and "rental", adding the non-distinctive preposition "the", and the generic top level domain identifier ".com". The disputed domain name also fully incorporates Complainant's trademark "NATIONAL", merely adding "rental car" that describes Complainant's business and the non-distinctive preposition "the", and adding the generic top level domain identifier ".com".

Furthermore the Complainant assumes that the Respondent has registered the disputed domain name in bad faith, because the Respondent is using a well-known trademark and - at least for some period of time - the owner of <thenationalrentalcar.com> domain name used a privacy service to shield their identity.

A copy of the WHOIS record for <thenationalrentalcar.com> from the records of the Registrar on 08 September 2017 at the time the Complaint in this matter was filed was attached. A copy of the current WHOIS record for <thenationalrentalcar.com> from the records of the Registrar was attached as well. ICANN’s Uniform Domain Name Dispute Resolution Policy was also attached.

PARTIES CONTENTIONS

No administratively compliant response has been filed.

RIGHTS

The 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

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

The 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

According to paragraph 4(a) of the Policy the Complainant must prove for the requested transfer of the disputed domain name "thenationalrentalcar.com" that

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

There is no reasonable doubt that the Complaint complies with all these requirements:

(i) The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks NATIONAL CAR RENTAL and NATIONAL as it includes the trademark in its entirety, with merely reversing the words "car" and "rental", adding the non-distinctive preposition "the" and the Top-Level domain ".com" which is not sufficient to exclude the likelihood of confusion. As previous panels have ruled, changing the CAR RENTAL portion of Complainant's NATIONAL CAR RENTAL mark to "rental car" does not distinguish a domain name from the NATIONAL CAR RENTAL and NATIONAL marks (see Vanguard Trademark Holdings USA LLC v. M2 Enterprises, Inc., NAF Case No. FA 1007001335021). As previous panels have also found, adding a non-distinctive preposition such as "the" to a registered trademark does not distinguish a domain name from a registered trademark (see YETI Coolers, LLC v. Super Privacy Service, NAF Case No. FA 1606001681147).

(ii) Furthermore the Complainant provided prima facie evidence that the Respondent has no rights or legitimate interests in the disputed domain name <thenationalrentalcar.com>. The Complainant stated that the Respondent is not affiliated with or authorized by the Complainant in any way. There is no evidence that the Respondent is been commonly known by the disputed domain name <thenationalrentalcar.com> or by a name corresponding to the disputed domain name.

The Panel finds that the Respondent has made no use of, or demonstrable preparations to use, the domain name in connection with a bona fide offering of goods or services, is not making a legitimate non-commercial or fair use of the disputed domain name. In fact, the disputed domain name does not resolve to any active web page. Previous panels have found that failure to make active use of a confusingly similar domain name is evidence that the Respondent has not made a bona fide offering of goods or services or a legitimate noncommercial or fair use (see Kaspersky Lab Zao v. Waldemar Reiswich, NAF Case No. FA 1006001327775).

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 <thenationalrentalcar.com>.

(iii) For a Complaint to succeed, a panel must be satisfied that a domain name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)).

Bad faith requires the Respondent to be aware of the Complainant's trademark. In the present case, the Panel finds it hard to believe that the Respondent would have chosen and registered the disputed domain name <thenationalrentalcar.com> in good faith, without having been aware of the Complainant's NATIONAL CAR RENTAL and NATIONAL trademarks. The Complainant's trademarks are well known and widely used in Canada and the United States. In fact, it is obvious that whoever registered the disputed domain name <thenationalrentalcar.com> was well aware of and had National Car Rental in mind when it was registered with the intend to exploit its similarity to the NATIONAL CAR RENTAL and NATIONAL marks. This is especially true in the light of effect that the WHOIS record for <thenationalrentalcar.com> listed the Registrant as "Mrs. McNulty" and the Registrant Organization as "National Car Rental" using the address for the National Car Rental location in McKinleyville, California, while (the real) Mrs. McNulty herself has stated, that the disputed domain name was registered without her authorization and she did not own or control it. Shortly after Complainant's representative inquired of Mrs. McNulty regarding the <thenationalrentalcar.com> domain name the ownership in the WHOIS record was changed to a privacy service to shield the real identity. In the commercial context, this raises a rebuttable presumption of bad faith (see Enterprise Holdings, Inc. v. Pinnacle Investment Group, LLC, NAF Case No. FA1607001684948).

Therefore the Panel finds, that the disputed domain name <thenationalrentalcar.com> has been registered and is being used in bad faith under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **THENATIONALRENTALCAR.COM**: Transferred

## PANELLISTS

| Name | **Prof. Dr. Lambert Grosskopf, LL.M.Eur.** |
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DATE OF PANEL DECISION 2017-10-29

Publish the Decision