Decision for dispute CAC-UDRP-101700

Case number	CAC-UDRP-101700
Time of filing	2017-11-15 09:53:42
Domain names	WwwMyCtCa.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Rising Tide Foundation

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	leed johnny

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

Rising Tide Foundation (hereinafter the Complainant) is an entrepreneurial, privately-endowed foundation established in 2010 in Switzerland. Pursuing a dual function, one philanthropic and the other business-oriented, Complainant is deeply rooted in the empowerment philosophy and serves to foster resilience in individuals, so that they can achieve better health, liberty and social/economic independence expeditiously.

The Complainant's philanthropic grant program is focused on three main areas: cancer research, libertarian, and social/educational causes. Complainant aim is to bring advanced treatment options to cancer patients today and accord individuals the opportunity to develop the knowledge, skills, attitudes, and degree of self-awareness necessary to effectively make and assume responsibility for their life decisions and carve out a better future for themselves and their families.

The Complainant also owns several subsidiaries in Switzerland, England and Singapore, which generate income through intellectual property management, and investment research and reporting services to further our philanthropic causes.

The Complainant produced evidence that it is the owner of the following registrations for the "CTCA" trademark:

U.S. trademark registration no. 413861 "CTCA", registered on May 8, 2012, in classes 41 and 44.
Mexico trademark registration n. 1390369 "CTCA", registered on August 15, 2013, in class 41.
Mexico trademark registration n. 1390370 "CTCA", registered on August 15, 2013, in class 44.
Canada trademark registration n. 1829036 "CTCA", applied for on March 23, 2013, and registeredon March 23, 2017, in class 1.

The Complainant has also registered and is using in connection with its activities a number of domain names containing the term “CTCA”, for example <myctca.com>, <ctca.net>, <ctca4hope.net>, and <ctcacenter.com>.

On October 28, 2017, the first Respondent registered the disputed domain name <wwwmyctca.com> and on the same day the second Respondent registered the disputed domain name <wwwmyctca.xyz>

The disputed domain name <wwwmyctca.com> resolves to a pay-per-click page and the disputed domain name <wwwmyctca.xyz> is currently not in use.

The Respondent did not reply to the Complainant's contentions.

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

Language of the Proceeding

Paragraph 11 of the Rules provides that:

“(a) 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 language of the Registration Agreement for the disputed domain name is Chinese, as confirmed by the Registrar in its verification email to the Center of October 7, 2016.

The Complainant requested that the language of the proceeding be English.

The Respondent did not respond to the Complainant's language request.

The Panel cites the following with approval: "Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (Groupe Auchan v. xmxzl, WIPO Case No. DCC2006-0004).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

(i) The disputed domain name consists of Latin letters, rather than Chinese letters;
(ii) The Respondent answered to a cease and desist letter in the English language;
(iii) The latest part of the e-mail chain between the Complainant's legal representatives and the Respondent is in English.
(iv) The Complainant has no knowledge of Chinese, and in the present case, the use of a language other than English would impose a significant burden on the Complainant in view of the facts in question.

Upon considering the above, the Panel determines that English be the language of the proceeding.

Consolidation of Respondents

Paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder. However, Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes.

Where a complaint is filed against multiple respondents, panels typically look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. In the present case, the disputed domain names resolve to different domain names. However, the Complainant argues that both disputed domain names are under common control. Previous UDRP Panels have provided various factors which may be taken into account including common phone numbers and addresses. (Lancôme Parfums Beauté et compagnie and L'Oréal v. Din Mont and Yunleng Mercyk, WIPO Case No. D2016-1721).

In the present case a number of factors can be taken into account: (i) both disputed domain names were registered on the same date; i.e. October 28, 2017; (ii) while the record shows that the disputed domain name <wwwmyctca.com> is owned by Nexperian Holding Limited and the disputed domain name <wwwmyctca.xyz> is owned by Leed Johnny (the Respondent), Nexperian Holding Limited appears as the Administrative Contact and both disputed domain names; (iii) The Registrants of both disputed domain names appear to have the same address, telephone number and facsimile number; (iv) the Respondent has answered the demand letter issued by the Complainant referring to both domains; and (v) the Respondent did not object to the consolidation request.

Consequently, considering the facts in the present case, the Panel finds that the Complainant has established that the disputed domain names are subject to common control or ownership and therefore it is appropriate to consider the complaint filed against both Respondents in the present proceeding.

Under the particular circumstances of this case consolidation would be fair and equitable to all parties and procedurally efficient, and therefore the Panel allows the consolidation as requested by the Complainant pursuant to paragraph 10(e) of the Rules.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant is the owner, among others, of the following registrations for the trademarks U.S. trademark registration no. 413861 "CTCA", registered on May 8, 2012 identified above.

The Complainant is also the owner of numerous domain names bearing the signs “CTCA”: <MYCTCA.COM>, <CTCA.NET, BIZ, HK>, <CTCA-CORP.COM, NET, ORG>, <CTCACENTER.COM, BIZ, IN, INFO, MOBI >, <CTCA4HOPE.NET> and many others.

The disputed domain names <WWWMYCTCA.COM> and <WWWMYCTCA.XYZ> are confusingly similar to the Complainant’s trademark “CTCA”. The disputed domain names incorporate the entirety of the Complainant’s trademark in addition to the letters “www”. The letters “www” refer to the words World Wide Web. The addition of the letters “www,” which refer to the manner of accessing information on the Internet, does not serve to sufficiently distinguish the disputed domain names from the Complainant’s trademark. See, among others, M/s Daiwik Hotels Pvt. Ltd v. Senthil Kumaran S, Daiwik Resorts, WIPO Case No. D2015-1384, <daiwikresorts.com>, Nintendo of America Inc. v. Fernando Sascha Gutierrez, WIPO Case No. D2009-0434, <unlimitedwiidownloads.com> and Hoffmann-La Roche Inc. v. Wei-Chun Hsia, WIPO Case No. D2008-0923, <yourtamiflushop.com>; Wiluna Holdings, LLC v. Edna Sherman, FA 1652781 (FORUM Jan. 22, 2016) (Finding the addition of a generic term and gTLD is insufficient in distinguishing a disputed domain name from a mark under paragraph 4(a)(i) of the Policy.).

Furthermore, the disputed domain names contain the gTLDs “.COM” and “.XYZ”. The addition of a gTLD to a mark in order to form a domain name does not sufficiently distinguish the disputed domain name from the Complainant's trademarks (see Crocs, Inc. v. [Registrant], FA 1043196 (FORUM Sept. 2, 2007) (determining that “the addition of a ccTLD is irrelevant to the Policy 4(a)(i) analysis, as a top-level domain is required of all domain names”); see also Bloomberg Finance L.P. v. Cesar R Shepard, FA 1742833 (FORUM Sept. 5, 2017) (“Respondent’s <bloomberg.pw> domain name is identical to Complainant’s mark because it merely appends the top-level domain (TLD) “.pw” to the fully incorporated mark.”).

Consequently, the Panel finds that the Complainant has shown that the disputed domain names are confusingly similar to the “CTCA” trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview 3.0”), paragraph 2.1.

In the present case, the Complainant has demonstrated to the Panel that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent had failed to assert any such rights or legitimate interests.

The Panel finds that the Complainant has established a prima facie case in this regard, inter alia, since the Complainant has not licensed or otherwise permitted the Respondent to use the “CTCA” trademark, or a variation thereof.

The Respondent is not commonly known by the disputed domain names nor by is he known as CTCA. The Respondent has not submitted a response and did not provide any evidence to show any rights or legitimate interests in the disputed domain name that is sufficient to rebut the Complainant’s prima facie case.

In the circumstances of this case, and in light of the Respondent’s lack of use of the disputed domain name, set out in more detail below, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant must show that the Respondent registered and is using the disputed domain names in bad faith [paragraph 4(a)(iii) of the Policy]. Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence, which shows that the Respondent registered the disputed domain names long after the Complainant has registered its trademarks “CTCA” in the U.S. in 2012. The evidence provided by the Complainant shows that the Respondent is aware of the Complainant and its CTCA mark. The evidence shows that the Respondent operates a click-per-pay website under the disputed domain name <wwwmyctca.com>, which provides a link titled "CTCA" and leads to a webpage providing advertisment to Cancer specialists and treatment centres. Under these particular circumstances, the Respondent’s bad faith can be inferred, in view that the trademark, owned by the Complainant, was registered long before the registration of the disputed domain names. (Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735; Skattedirektoratet v. Eivind Nag, WIPO Case No. D2000-1314).

The evidence also shows that the disputed domain names are not used for any bone fide offerings of goods or services. In the present case, the Respondent has been using the disputed domain name <wwwmyctca.com> to provide pay-per-click links, which are associated with the Complainant’s business. Such use cannot be considered as a bona fide offering of goods or services pursuant to paragraph 4(c)(i) of the Policy, nor do they constitute a legitimate non-commercial or fair use pursuant to paragraph 4(c)(iii).

The evidence provided by the Complainant indicates that the Respondent has registered or acquired the domain names with knowledge of the Complainant, primarily for the purpose of selling, renting, or otherwise transferring the domain names registration to the Complainant who is the owner of the trademark or service mark or to a competitor of Complainant (paragraph 4(b)(i) of the Policy). The Complainant provided evidence showing that the Respondent has offered to sell both disputed domain names at a sum exceeding the Respondent's out of pocket costs for the registration of the disputed domain names stating that the offer was under the expected cost of these proceedings and therefore the Complainant should accept it. Such offer of sale is a clear indication of bad faith registration and use under the Policy.

In addition, while the disputed domain name <wwwmyctca.xyz> is currently inactive, UDRP decisions have confirmed that the passive holding of a domain name with knowledge that the domain name infringes another party’s trademark rights is evidence of bad faith registration and use (see, in this regard, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574). Moreover, under the particular circumstances of this case, where the evidence shows that the Respondent appears to be holding both disputed domain names under two different names, is operating one of these disputed domain names as pay-per-click website having links associated with the Complainant’s business, and has made an offer for sale for both disputed domain names, the passive holding of one of these disputed domain names is consistent with a finding of bad faith registration and use of both disputed domain names.

Based on the evidence presented to the Panel, including the late registration of the disputed domain names in view of the Respondent’s knowledge of the Complainant, the failure of the Respondent to respond to the Complaint, the offer of sale made by the Respondent, and that the disputed domain names are not used for a bona fide offering of goods or services, the Panel finds that the disputed domain names were registered and are being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden 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. **WWWMYCTCA.COM**: Transferred
2. **WWWMYCTCA.XYZ**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2018-01-11

Publish the Decision