Decision for dispute CAC-UDRP-102151

Case number	CAC-UDRP-102151
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Domain names	n0rauto.com

Case administrator

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

Complainant

Organization	NORAUTO INTERNATIONAL SAS

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Super Privacy Service LTD c/o Dynadot

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant is the owner of a number of International trademark registrations covering various jurisdictions including the following examples:

- International trademark NORAUTO® n°558433 for NORAUTO registered and renewed since March 8, 1990;
- International trademark NORAUTO® n°591237 for NORAUTO registered and renewed since July 9, 1992; and
- International trademark NORAUTO® n°633201 for NORAUTO registered and renewed since March 2, 1995

FACTUAL BACKGROUND

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

The Complainant is a European leader in the car maintenance sector under the trademark NORAUTO. Its centers provide multi-brand maintenance solutions. With over 8.500 direct employees and 502 NORAUTO centers in the world, the Complainant is present in 8 countries.

Complainant owns a number of registrations for the NORAUTO trademark and it also owns several domain names including

<norauto.com>, registered since November 19, 1996, and <norauto.fr>, registered since March 18, 2008.

The disputed domain name redirects users to Complainant's own website for the country of Argentina at www.norauto.com.ar.

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

Trademark Rights and Identity or Confusing Similarity:

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term NORAUTO for goods and services classes covering autmobiles and parts and accessories therefore. Further, the Complainant is the owner of the disputed domain name (and other domain names) that incorporate its trademark. All of the above were created and registered prior to the creation date of the disputed domain name on April 16, 2018. As such, the Panel finds that the Complainant possesses rights in its NORAUTO trademark.

Next, previous panels have found that, where the asserted trademark is recognizable within a disputed domain name, a slight spelling variation of complainant's trademark does not prevent a disputed domain name from being confusing similar to that mark under paragraph 4(a)(i) of the Policy. See, e.g., Arcelormittal v. davd anamo, Case No. 101267 (CAC, October 4, 2016) (domain name <arcelormiltal.com> held confusingly similar to the complainant's ARCELORMITTAL trademark).

In the present case, the disputed domain name consists of the word NORAUTO spelled with the number zero „0" in place of the first letter „O" of the Complainant's trademark. This precise typographical subsitution has been held to be confusingly similar with a Complainant's trademark. See, e.g., La-Z-Boy Incorporated v. Erika Slade, Claim No. FA 779228 (FORUM, April 24, 2018) („The disputed domain name <la-z-b0y.com> corresponds to Complainant's registered LA-Z-BOY trademark, substituting the numeral "0" for the letter "O" and appending the ".com" top-level domain. These alterations are insufficient to distinguish the domain names from Complainant's mark.")

In light of the above, the Panel concludes that the Complainant possesses rights to the NORAUTO trademark and that the disputed domain name is confusingly similar to such mark.

2. Rights or Legitimate Interest:

Paragraph 4(a)(ii) of the Policy directs an examination of the facts to determine whether a respondent lacks rights or legitimate interest in the disputed domain name. Paragraph 4(c) of the Policy lists a number of ways in which a respondent may demonstrate that it does have such rights or interest.

The first example, under Paragraph 4(c)(i) of the Policy, is where "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". Here, the disputed domain name redirects to the Complainant's own www.norauto.com.ar website directed to the country of Argentina. Such use has been held not to be bona fide. See, e.g., Choice Hotels International, Inc. v. EasyAnt Software Solutions / Anthony Ivins, Claim Number: FA 1477085 (FORUM, February 8, 2013) (Where respondent's domain merely redirected visitors to the Complainant's own website "The Panel concludes that Respondent does not make a bona fide offering of goods or services under Policy 4(c)(i)"). The underlying reason for this conclusion is that redirecting to a complainant's own site indicates that the respondent is merely using the disputed domain name to gain affiliate revenue and it is not pursuing any other productive or bona fide purpose. Where, as here, there is no reply or other submission to the contrary the Panel is left with no other reasonable explanation for such activity.

The second example, under Paragraph 4(c)(ii) of the Policy, is a scenario in which a respondent is commonly known by the domain name. The Complainant has submitted evidence showing that the Respondent's identity is hidden in the Whois record for the disputed domain name by a privacy service. As such, and in the absence of any submission by the Respondent, there is no other evidence in the record to suggest that the Respondent is commonly known by the disputed domain name or that has it acquired any trademark rights relevant thereto. As such, this sub-section of the Policy is of no help to the Respondent.

As to the third example, under Paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the NORAUTO trademark. Respondent is using the resolving disputed domain name to redirect users to one of the Complainant's own websites – presumably to gain affiliate revenue. This is certainly not non-commercial. It also cannot be considered fair as it does not fit in to any accepted category of fair use such as news reporting, commentary, political speech, education, nominative or generic use, etc.

In light of the above analysis, this Panel finds that the facts of this case do not demonstrate that the Respondent has any rights or legitimate interest in any of the disputed domain names.

3. Bad Faith:

Finally, the Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. Hallmark Licensing, LLC v. EWebMall, Inc., Case No. D2015-2202 (WIPO, February 12, 2016) ("The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.")

Bad faith registration and use has often been found where a respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with a complainant's trademark as to the source, sponsorship, affiliation, or endorsement of Respondent's website (paragraph 4(b)(iv) of the Policy).

Here it is beyond question that the Respondent was on actual notice of the Complainant's rights in its NORAUTO trademark. The disputed domain name redirects users to one of the Complainant's own websites at which the trademark is used prominently.

Redirection to a complainant's own website, by a domain name that contains its trademark, is typically not considered a good faith use of the domain name. Mandarin Oriental Services B.V. v. Domain Administrator, Matama, Case No. D2017-0615 (WIPO, May 10, 2017) ("Redirecting the disputed domain name to the Complainant's own website implies also bad

faith: Such behaviour includes the risk that the Respondent may at any time cause Internet traffic to redirect to a website that is not that of, or associated with, the Complainant.")

Of course, as the owner of the <actavisgenerics.com> domain name, the Respondent is entirely and solely responsible for the content of its website and the functioning of its domain name regardless of whether such content or function are selected or controlled by the Respondent or by another entity such as a registrar or hosting provider. See, e.g., Disney Enterprises, Inc. v. ll, Claim No. FA 1336979 (FORUM, August 31, 2010) (Respondent acted in bad faith, despite its claimed lack of control over the content on its parked, pay-per-click website); Transamerica Corporation v. Domain Administrator / Sandesa, Inc., Claim No. FA 1704763 (FORUM, January 4, 2017) ("Respondent is responsible for the use made of the domain name. Knowingly registering a domain containing another's mark and parking it without limiting the ability of the parking service to improperly use it is sufficient evidence of bad faith registration and use.")

In light of the above analysis, this Panel finds that the Respondent has registered and used the disputed domain name in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all of the elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **N0RAUTO.COM**: Transferred

PANELLISTS

Name	**Steven M. Levy, Esq.**

DATE OF PANEL DECISION 2018-10-19

Publish the Decision