Decision for dispute CAC-UDRP-102620

Case number	CAC-UDRP-102620
Time of filing	2019-08-13 00:00:00
Domain names	blablacar.email

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	COMUTO

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Oleg Berest

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademark registrations:

- EUTM registration n°010812485 BLABLACAR, filed on 17/04/2012 and registered on 31/08/2012 for products/services in classes 9, 12, 38, 39 and 42.

- EUTM registration n°010813236 BlablaCar (fig), filed on 17/04/2012 and registered on 03/09/2012 for products/services in classes 9, 12, 38, 39 and 42.

- International trademark n°1240011 BLABLACAR, dated 30/01/2015, for products/services in classes 9, 12, 38, 39 and 42.

- International trademark n°1305968 BLABLACAR, dated 22/04/2016, for products/services in classes 9, 35, 36, 38, 39 and 42.

FACTUAL BACKGROUND

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

Since 2006, COMUTO (the Complainant) do business under the denomination BLABLACAR® (Annex 1). BLABLACAR® is a trusted community marketplace that connects drivers with empty seats to passengers looking for a ride (please see their website at www.blablacar.com). With 70 million members in 22 countries and over 25 million travellers every quarter, BLABLACAR® is making travel social, money-saving and more efficient for millions of members.

The Complainant is the owner of several BLABLACAR® trademarks registered and used in several countries:

- the European trademark BLABLACAR® n°010812485 registered since 2012-08-31;
- the European trademark BLABLACAR® n°010813236 registered since 2012-09-03;
- the international trademark BLABLACAR® n°1240011 registered since 2015-01-30;
- the international trademark BLABLACAR® n°1305968 registered since 2016-04-22.

The Complainant also owns many domain names including the distinctive wording BLABLACAR®, such as:
- <blablacar.com> registered on 31/08/2010;
- <blablacar.net> registered on 16/09/2010;
- <blablacar.org> registered on 16/09/2010;
- <blablacar.es> registered on 17/09/2010;
- <blablacar.fr> registered on 17/09/2010;
- <blablacar.it> registered on 27/04/2011;

The disputed domain name <blablacar.email> has been registered on July 29th, 2019 and is inactive.

According to the WIPO Case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Complainant claims that the Respondent is not identified in the WHOIS database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name. Please see for instance:
- FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).”);
- FORUM Case No. FA 699652, The Braun Corporation v. Wayne Loney.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <blablacar.email> and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark BLABLACAR®, or apply for registration of the disputed domain name by the Complainant.

Besides, the disputed domain name is inactive (Annex 6). Therefore, the Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Please see for instance:
- WIPO Case No. D2000-1164, Boeing Co. v. Bressi (“the Respondent has advanced no basis on which he could conclude that

it has a right or legitimate interest in the domain names");
- FORUM Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants ("The Panel finds that Respondent's lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy paragraphs 4(c)(i) and (iii).")

Accordingly, the Respondent has no rights or legitimate interests on the disputed domain name <blablacar.email>.
The Complainant states that the disputed domain name <blablacar.email> is identical to its trademarks BLABLACAR®. The trademark BLABLACAR® is registered in TMCH since October 28th, 2014. Moreover, the Complainant contends that its trademark predates the registration of the domain name <jardiance.app>.

The expression BLABLACAR® has no meaning in any language. It is only known in relation with the Complainant. Indeed, a Google search provides results only in relation with the Complainant.

Besides, as noted by a previous Panel in the decision WIPO n° D2016-0758, COMUTO v. Este sas di S. Terracina & C. Societa/Ditta, "in the age of the Internet and the advancement in information technology, taking into account the market presence of the Complainant in numerous European countries, its registered trademarks and presence on the Internet, a simple search on the Internet reveals the presence of the Complaint's trademark and domain names. Therefore, the Panel finds that it is very likely that the Respondent had actual knowledge of the Complainant's trademark rights at the time it registered the disputed Domain Name".

Furthermore, the Complainant has 75 million drivers and passengers in 22 countries.

Therefore, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks.

Besides, the Respondent uses a proxy service in order to conceal its identity.

Furthermore, the Complainant argues that the domain name resolves to an inactive webpage (Annex 6). The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated active use of the domain names by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

Please see WIPO Case No. D2000-1614, Inter-IKEA v. Polanski; WIPO Case No. D2000-0438, Inter-IKEA Systems B.V. v. Hoon Huh; WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name <blablacar.email> in bad faith.

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

I. RIGHTS

The Disputed domain name is identical to the Complainant’s registered trademarks since it reproduces the Complainant’s mark ‘BLABLACAR’, merely adding the CC top level domain identifier ‘.EMAIL’ at the end.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any reply. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the disputed domain name in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

“As mentioned above in section 3, the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists. WIPO Case No. D2002-0273 <sachsen-anhalt>; WIPO Case No. D2002-0521 <volvovehicles.com>”.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

III. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant´s allegations and evidence with regard to the Respondent´s registration and use of the disputed domain name in bad faith.

Paragraph 4(b) (iiii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent has registered and is using the disputed domain name in bad faith:

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

The Complainant's BLABLACAR trademark is well-known as a popular car sharing site and app, and has been for years before the registration of the Disputed domain name. The Respondent's registration of the first disputed domain name wholly incorporating a well-known third-party mark is, in the Panel´s view, indicative of bad faith.

As mentioned in Andrey Ternovskiy dba Chatroulette v. Alexander Ochki, WIPO Case No. D2017-0334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see AT&T Corp. v. Amjad Kausar, WIPO Case No. D2003-0327)."

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BLABLACAR.EMAIL**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2019-09-18

Publish the Decision