Decision for dispute CAC-UDRP-103362

Case number	CAC-UDRP-103362
Time of filing	2020-10-27 13:47:54
Domain names	carglass.fun

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Belron International Limited

Complainant representative

Organization	HSS IPM GmbH

Respondent

Name	Владимир / Vladimir Волынский / Volynsky

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.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following registrations of the trademark CARGLASS (the “CARGLASS trademark”):

- the BENELUX trademark CARGLASS with registration No. 0461610, registered on 25 May 1989 for goods and services in International Classes 12, 21 and 37; and

- the trademark CARGLASS with registration No. 156103, registered in Ukraine on 10 May 2012 for goods and services in International Classes 12, 21 and 37.

FACTUAL BACKGROUND

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

The Complainant is the world’s largest dedicated vehicle glass repair and replacement company. It has approximately 29,000 employees in over 35 countries on 6 continents. The Complainant operates official websites at the domain names <carglass.com> registered in 1998, <carglass.ru> registered in 2000, and <carglass.ua> registered in 2012, among others.

The Respondent registered the disputed domain name on 12 March 2020. At the time of filing of the Complaint, it resolved to a website offering a third-party liquid coating product recommended for use on cars.

The Complainant notes that on 30 April 2020 it sent a takedown request to the Registrar, which the latter forwarded to the Respondent, but the Respondent did not respond.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the disputed domain name is identical to the Complainant's distinctive and well-known CARGLASS trademark, which it incorporates in full. According to the Complainant, the term "carglass" is not commonly used in the English language and is not a descriptive generic term.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, as it was not authorized by the Complainant to use the CARGLASS trademark, is not commonly known by the disputed domain name, and has no trademark rights in it. The Complainant submits that the Respondent is using the disputed domain name for a website offering the third-party liquid coating product recommended for use on cars. This product is offered apparently on behalf of a company named LLC "Karglas", indicated as having an address in Kiev, Ukraine, and the Respondent's website contains no disclaimer for the lack of affiliation with the Complainant. The Complainant notes that a search made it found only one company with the name LLC "Karglas", which was however located in Kaliningrad, the Russian Federation. According to the Complainant, the Respondent is thus not carrying out a bona fide offering of goods or services in compliance with the requirements set out in Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903. The Complainant also submits that at a certain point in time the Respondent has also used the disputed domain name for a perfume online shop, and points out that the Respondent activated its website for the first time only after the Complainant's takedown request of 30 April 2020 was forwarded to the Respondent by the Registrar.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant submits that the CARGLASS trademark was registered long before the disputed domain name, and has achieved a high degree of renown worldwide as a result of its long use and advertising. According to the Complainant, the use of the CARGLASS trademark in the disputed domain name is a deliberate attempt to benefit from the goodwill of the trademark. The Complainant points out that the Respondent did not respond to the Complainant's takedown request, and has used the disputed domain name to host different websites, including an online perfume shop and a website offering a liquid coating recommended for use on cars. According to the Complainant, this shows that the Respondent is using the classic "bait and switch" scheme to attract visitors to its website who are looking for the Complainant, and then offer them different third-party products. The Complainant contends that the above shows that the Respondent has intentionally chosen the disputed domain name targeting the well-known CARGLASS trademark, to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

RESPONDENT:

The Respondent did not file a Response.

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 reason why it would be inappropriate to render a decision.

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11 of the Rules, 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 Complainant requests the language of the proceeding to be English, and points out that the disputed domain name contains the English language word “fun” as its gTLD extension, instead of a ccTLD extension that would refer to the Russian or the Ukrainian market, and resolves to a website that offer a product that also contains an English language word. The Complainant notes that it filed a takedown request before the Registrar written in English, which was forwarded to the Respondent, and the Respondent did not mention that it did not understand the takedown request. With these arguments, the Complainant submits that the Respondent has good understanding of the English language. The Respondent has not objected to the Complainant’s request on the language of the proceeding.

The above satisfies the Panel that the Respondent would not be disadvantaged if the language of the proceeding is English, and is satisfied that using this language in this proceeding would be fair and efficient. Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English. At the same time, the Panel will take into account the evidence in the case file that is in the Russian language.

PRINCIPAL REASONS FOR THE DECISION

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the respondent has registered and is using the domain name in bad faith.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the CARGLASS trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.fun” gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the element “carglass”, which is identical to the CARGLASS trademark. Taking this into account, the Panel finds that the disputed domain name is identical to the CARGLASS trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Overview 3.0”).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because the Respondent was not authorized to use the CARGLASS trademark and is not commonly known under the disputed domain name. The Complainant points out that the disputed domain name is connected to a website that offers third party products. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not alleged that it has rights or legitimate interests in the disputed domain name.

The disputed domain name is identical to the CARGLASS trademark, which was registered many years before it. It may lead Internet users to believe that the Respondent’s website is affiliated to the Complainant, and they may thus decide to visit it. The evidence submitted by the Complainant and not disputed by the Respondent shows that the disputed domain name has indeed been associated to a website offering third-party products. The Respondent has not replied to the Complainant’s takedown request, and its website indicates as its provider a company whose existence has been questioned by the Complainant, but the Respondent has not provided evidence of its existence.

The above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant’s CARGLASS trademark, has registered and used the disputed domain name in an attempt to exploit this trademark’s goodwill to mislead and attract Internet users to its website and then offer them third-party products, which is a typical example of the so-called “bait and switch” cybersquatting tactic for financial gain. The Panel regards such activity as illegitimate, and it does not give rise to rights and legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The disputed domain name is identical to the CARGLASS trademark, which may lead Internet users to believe that the Respondent's website is affiliated to the Complainant. As submitted by the Complainant and not denied by the Respondent, the disputed domain name is associated to a website offering third-party products, and it was activated after the Respondent received the Complainant's take down request, to which the Respondent did not respond.

Taking all the above into account, the Panel accepts that as more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the CARGLASS trademark in an attempt for commercial gain to attract traffic to the disputed domain name by creating a false impression in Internet users that the Respondent's website and the third-party products offered on it are affiliated to the Complainant.

This satisfies the Panel that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CARGLASS.FUN**: Transferred

PANELLISTS

Name	**Assen Alexiev**

DATE OF PANEL DECISION 2020-12-04

Publish the Decision