Decision for dispute CAC-UDRP-100241

Case number	CAC-UDRP-100241
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Domain names	alomaalamo.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	Vanguard Trademark Holdings USA LLC

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Name	Dyk Dylina

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other pending proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks for the designation "ALAMO" inter alia:

- European Community Trademark Registration No. 1860592 dated 16 February 2002 for ALAMO in International Classes 12, 16, 36 and in International Class 39 for the following services: “provision of transport services including for both leisure and business purposes; hiring of transport vehicles including the provision of such services to the functioning of airports; loaning of vehicles; vehicle parking; hiring of vehicle accessories; inspection of vehicles before transport; travel for and escorting of travellers; provision of information about the transport of goods and information relating to tariffs, timetables and methods of transport; transport reservation and arranging services; vehicle rental, reservation and leasing services; relating online services; and related promotional and discount services; automobile rental and leasing services; car leasing services; vehicle rental, reservation and leasing services.”

- US Registration No. 1,097,722 issued 25 July 1978
ALAMO in International Class 39 for “automotive renting and leasing services.”

US Registration No. 2,805,426 issued 13 January 2004

ALAMO.COM in International Class 35 for “promoting the goods and services and of others through a membership benefit program which entitles members to receive discounts on renting and leasing vehicles” and in International Class 39 for “vehicle renting and reservation services; vehicle leasing services.”

FACTUAL BACKGROUND

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

Vanguard Trademark Holdings USA LLC v.
"Dyk Dylina"

FACTUAL AND LEGAL GROUNDS. ICANN Rule 3(b)(ix).

Procedural Issue.

Notwithstanding the fact that the language of the registration agreement is Finnish, Complainant respectfully requests that the language of these proceedings be English. Generally, the language of proceedings under the Policy should be the language of the domain name registration agreement. However, Complainant wishes to make of record the following:

(1) Respondent appears to be very familiar with the English language since the disputed domain name resolves to a website which appears to have exclusively English content and virtually all of the links on the web page to which the disputed domain name resolves are in English. The fact that Respondent has used the name of town in Florida, "Aloma," as part of his domain name also indicates a familiarity with the US and the English language.

(2) It appears that the Respondent, "Dyk Dylina", is an alias used by the person or persons who have used the alias "Rampe Purda" in the past. "Dyk Dylina" uses the same "modus operandi" as Rampe Purda. The domain name at issue is registered with Hebei Domains, Shanghai, China using the Finnish language the domain name is registered in the name of Privacy—Protect.org, also of Shanghai, China. Both "Rampe Purda" and "Dyk Dylina" use an address in Hailuoto, Finland. The "Rampe Purda" address is Luovontie 176 and "Dyk Dylina" uses the address Luovonite 11. Both use a "hotmail.com" email account. The chances that there are two unrelated cybersquatters in Hailuto, Finland using the same modus operandi are virtually non-existent. Hailuoto, Finland is an island and a municipality in the province of Oulu, Finland with a population of approximately 1,000 as of January, 2011. See attached print-out regarding Hailuoto, Finland from db-city.com attached as Annex 1.

(3) There have been quite a number of UDRP proceedings involving the Respondent "Rampe Purda," all of which determined that the domain names were registered and used in bad faith, including Hertz System, Inc. v. Rampe Purda/PrivacyProtect.org, WIPO Case No. D2010-0636; U. S. Natural Resources, Inc. v. Rampe Purda/Privacy--Protect.org, WIPO Case No. D2010-0720; LEGO Juris A/S v. Rampe Purda/Privacy--Protect.org, WIPO Case No. D2010-0840; and L’Oréal v. Rampe Purda/Privacy —Protect.org, WIPO Case No. D2010-0870. Respondent did not exercise the option to take part in those proceedings and they were conducted in English.

(4) Under the circumstances, to require the Complainant to incur the heavy expense of translation of the documents in this case into Finnish would be unduly onerous and would reward a cybersquatter who clearly utilized a Chinese Registrar, used Finnish as the language of the registration agreement and utilized a Chinese-based "privacy service" just for the reason that it would make a UDRP action more expensive and burdensome and possible discourage a UDRP filing.

For the foregoing reasons, Complainant respectfully requests that the language of these proceedings be English.

Substantive Basis.

This is a Complaint filed on behalf of Vanguard Trademark Holdings USA LLC.

According to the Registrar, the domain name at issue, alomaalamo.com, is owned of record by “Dyk Dylina." A copy of the

WHOIS record for the alomaalamo.com domain name from the records of the Registrar is attached as Annex 2

This Complaint is based on the following factual and legal grounds:

Vanguard Trademark Holdings USA LLC (“Complainant “) is the owner of the ALAMO mark which it licenses to Alamo Rent A Car.

Started in 1974, Alamo Rent A Car has locations in more than 42 countries worldwide, with more than 1,200 Alamo car rental locations throughout the United States, Canada, Europe, Latin America, the Caribbean, Asia Pacific, Africa and Australia. Since long prior to the registration of the alomaalamo.com domain name by its current owner and Registrar on 12 October 2010, Complainant’s licensee has been engaged in the car rental business under the ALAMO mark.

Complainant's licensee, Alamo Rent A Car, operates an on-line car rental site at alamo.com. A copy of the alamo.com web page is attached as Annex 3.

Trademark/Service Mark Information: ICANN Rule 3(b)(viii).

Complainant has registered its ALAMO mark and owns the following European Community registration:

European Community Trademark Registration No. 1860592 dated 16 February 2002 for ALAMO in International Classes 12, 16, 36 and in International Class 39 for the following services: “provision of transport services including for both leisure and business purposes; hiring of transport vehicles including the provision of such services to the functioning of airports; loaning of vehicles; vehicle parking; hiring of vehicle accessories; inspection of vehicles before transport; travel for and escorting of travellers; provision of information about the transport of goods and information relating to tariffs, timetables and methods of transport; transport reservation and arranging services; vehicle rental, reservation and leasing services; relating online services; and related promotional and discount services; automobile rental and leasing services; car leasing services; vehicle rental, reservation and leasing services.”

A print-out with details regarding this registration from the Office for Harmonization of Internal Markets (“OHIM”) data base is attached as Annex 4.

In addition, Complainant has registered and owns the following United States registrations:

Registration No. 1,097,722 issued 25 July 1978
ALAMO in International Class 39 for “automotive renting and leasing services.”

Registration No. 2,805,426 issued 13 January 2004
ALAMO.COM in International Class 35 for “promoting the goods and services and of others through a membership benefit program which entitles members to receive discounts on renting and leasing vehicles” and in International Class 39 for “vehicle renting and reservation services; vehicle leasing services.”

Copies of print-outs from the records of the United States Patent and Trademark Office showing the current status of each of these registrations are attached collectively as Annex 5.

In addition to its registrations in the European Community and the United States, Complainant has registered the ALAMO mark for vehicle rental services in many other countries.

1. Confusing similarity. ICANN Rule 3(b)(ix)(i); ICANN Policy ¶4(a)(i).

The domain name alomaalamo.com is confusingly similar to the registered ALAMO mark as used in connection with vehicle rental services. The alomaalamo.com domain name contains Complainant's ALAMO mark in its entirety preceded by the term "Aloma" which describes a geographic location in Florida where it could be expected that Complainant would operate

its rental car business. As shown on the map of Aloma, Florida attached as Annex 6, Aloma, Florida is located near the resorts in Orlando, Florida where people would need to rent a car for a vacation.

It is well established under [ICANN] Policy 4¶(a)(1), that the inclusion of a geographic term and gTLD do not distinguish a disputed domain name. See Medline Industries, Inc. v. N/A c/o Ingine Carastheim, FA 1087601 (Nat. Arb. Forum November 16, 2007) finding that the domain name <usamedline.com> is confusingly similar the mark MEDLINE. See also Net2phone Inc. v. Netcall SAGL, D2000-0666 (WIPO Sept. 26, 2000) finding that the respondent's domain name <net2phone-europe.com> is confusingly similar to the complainant's mark because "the combination of a geographic term with the mark does not prevent a domain name from being found confusingly similar"; see also Rollerblade, Inc. v. McCrady, D2000-0429 (WIPO June 25, 2000) finding that the top level of the domain name such as ".net" or ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

Respondent must also believe that "alomaalamo.com" is confusingly similar to the ALAMO mark since the web page at alomaalamo.com contains numerous links to sites offering vehicle rental services in competition with Complainant's licensee.

2. Right to or Legitimate Interests. ICANN Rule 3(b)(ix)(2); ICANN Policy ¶4(a)(ii).

The Respondent has no rights or legitimate interests in the disputed domain name.

The disputed domain name alomaalamo.com resolves to a web page that contains links to web pages that offer vehicle rental services. For example, the alomaalamo.com web page has links to "Car Rental," "Low Cost Car Rental," "Rental Car Agencies," "Auto Lease Deals," and "Vehicle Leasing," all of which are sites that offer car rental services from various vehicle rental providers. A copy of the web page at alomaalamo.com is attached as Annex 7.

In light of the long-standing use and registration of the ALAMO mark in connection with vehicle rental services throughout the world, Respondent cannot have any legitimate rights in the domain name at issue when used in connection with a web site that offers vehicle rental services or links to providers of car rental services. The fact that Respondent's web page for the alomaalamo.com domain name at issue includes links to the web sites that offer vehicle rental services in direct competition with those offered by Alamo Rent A Car is clear evidence that Respondent was well aware of the existence of Complainant.

Respondent's use is neither a bona fide offering of goods or services pursuant to Policy ¶4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). See Golden Bear Int'l, Inc. v. Kangdeock-ho, FA 190644 (Nat. Arb Forum Oct. 17, 2003)("Respondent's use of a domain name confusingly similar to Complainant's mark(s) to divert Internet users to websites unrelated to Complainant's business does not represent a bona fide offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use under Policy ¶4(c)(iii)."); see also Disney Eners., Inc. v. Dot Stop, FA 145227 (Nat. Arb. Forum Mar. 17, 2003)(finding that the respondent's diversionary use of the complainant's mark(s) to attract Internet users to its own website, which contained a series of hyperlinks to unrelated websites, was neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain names).

Complainant has not licensed or otherwise permitted Respondent to use the ALAMO mark in connection with vehicle rental services or any other goods or services or to apply for any domain name incorporating the ALAMO mark. In addition, Respondent is clearly not making any legitimate noncommercial or fair use of "Alamo." In fact, any claim in that regard is easily dismissed since the web page used by Respondent is the type of web page commonly used by domain name owners seeking to "monetize" their domain names through "click-through" fees.

There is nothing in the WHOIS records or on Respondent's web page to indicate that Respondent is commonly known as "ALOMAALAMO." See Compagnie de Saint Gobain v. Com-Union Corp., D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name); see also Charles Jourdan Holding AG v. AAIM, D2000-0403 (WIPO June 27, 2000) (finding no rights or legitimate interests where (1) the respondent is not a licensee of the complainant;

(2) the complainant's prior rights in the domain name precede the respondent's registration; (3) the respondent is not commonly known by the domain name in question).

As indicated above, Complainant's licensee operates an on-line car rental web site at alamo.com. It is clear that Respondent has no legitimate rights in the domain name at issue and is attempting to divert Internet traffic to its website at the domain name alomaalamo.com when Internet users type "alomaalamo.com" seeking an Alamo Rent A Car location near Aloma, Florida. Such a use constitutes a lack of rights or legitimate interest in the disputed domain names under ICANN Policy ¶¶ 4(c)(i) and (ii). See Big Dog Holdings, Inc. v. Day, FA93554 (Nat. Arb. Forum Mar. 9, 2000)(finding no legitimate use when respondent was diverting consumers to its own web site by using complainant's trademark(s)): see also MSNBC Cable, LLC v. Tysys.com, D2000-1204 (WIPO Dec. 8, 2000)(finding no rights or legitimate interest in the famous MSNBC mark where respondent attempted to profit using complainant's mark by redirecting Internet traffic to its own website).

Because of the commercial nature of Respondent's web site, it seems beyond question that the use of the domain name at issue is not a noncommercial or fair use under the Policy.

3. Registered and Used in Bad Faith. ICANN Rule 3(b)(ix)(3); ICANN Policy ¶4(a)(iii).

The facts of record suggest and support a finding that Respondent both registered and is using the alomaalamo.com domain name at issue in bad faith. That Respondent registered a domain name confusingly to the ALAMO mark owned by the Complainant evidences a clear intent to trade upon the goodwill associated with Complainant's ALAMO mark for car rental services. Respondent is deliberately using a domain name that is confusingly similar to Complainant's mark to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of its web site and the services offered at such web site. Respondent's bad faith is clearly evident from the fact that the links on the web page to which the alomaalamo.com domain name at issue resolves offers links to car rental services, thereby continuing the charade by trying to trick people into believing they reached the real ALAMO RENT A CAR web site.

A review of Respondent's web page at alomaalamo.com makes it very clear that Respondent has set up its web site to which the domain name at issue resolves with a view to commercial gain from "click-through" payments from Internet users who find their way to Respondent's web site. Although some visitors may realize their mistake, there will inevitably be a number who do "click through". The very essence of setting up the web site to which the alomaalamo.com domain name at issue resolves must be that it does result in commercial gain from Internet users accessing the links through the alomaalamo.com web site. Clearly Respondent does not operate a business known as "AlomaAlamo", nor, to the best of Complainant's knowledge, does it advertise under the "AlomaAlamo" name.

The business model based upon use of an infringing domain name to attract users to Respondent's web site is clear evidence that Respondent registered and is using the domain name at issue in bad faith pursuant to Policy ¶ 4(b)(iv). See Kmart v. Kahn, FA 127708 (Nat. Arb. Forum Nov. 22, 2002)(finding that if a respondent profits from its diversionary use of a complainant's mark when a domain name resolves to commercial websites and that respondent fails to contest a complaint, it may be concluded that the respondent is using the domain name in bad faith pursuant to Policy ¶ 4(b)(iv)); see also State Farm Mut. Auto. Ins. Co. v. Northway FA 95464 (Nat. Arb. Forum Oct. 11, 2000)(finding that a respondent registered the domain name <statefarmnews.com> in bad faith because that respondent intended to use a complainant's marks to attract the public to the web site without permission from that complainant).

As a result, Respondent's registration and use of the alomaalamo.com domain name at issue falls squarely within the parameters of ICANN Policy ¶ 4(b)(iv). See G.D. Searle & Co. v. Celebrex Drugstore, FA 123933 (Nat. Arb. Forum Nov. 21, 2002)(finding that respondent registered and used the domain name in bad faith pursuant to ICANN Policy ¶ 4(b)(iv) because respondent was using the confusingly similar domain to attract Internet users to its commercial website). See also Mattel, Inc., v. .COM. Co., FA 12683 (Nat. Arb. Forum Dec. 2, 2002) citing Pavillion Agency, Inc. v. Greenhouse Agency Ltd., D2000-1221 (WIPO Dec. 4, 2000)(finding that the "domain names are so obviously connected with the complainant that the use or registration by anyone other than complainant suggests 'opportunistic bad faith'").

In summary, it cannot be disputed that the Complainant has long standing and well-recognized rights and goodwill in the ALAMO mark in connection with vehicle rental services. The alomaalamo.com domain name is confusingly similar to Complainant's ALAMO mark registered for vehicle rental services. Respondent has no legitimate rights in the domain name at issue. Respondent has merely registered the alomaalamo.com domain name to capitalize on the goodwill that Complainant has developed in its ALAMO mark to drive Internet traffic inappropriately to Respondent's web site for commercial gain.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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 of the opinion that the request of the Complainant to change the language of the proceedings is justified in this case, in particular for the reason that the ADR-provider tried by all means to communciate the complaint to the Respondent, however, without success. All emails and postal notification returned undelivered. In view of the panel it would be to formalistic to deny a request for a change of language of one party if the language issue cannot play a role due to the non-receipt of the complaint by the other party. Therefore, the request to change the language of the proceedings is granted.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has established the fact that it has valid trademark rights for ALAMO in several classes.

The Domain Name is confusingly similar to the ALAMO marks, since the element "Aloma" is a geographical suffix for a town in Florida, US, here not being relevant to influence the overall impression of the designation in the Domain Name (see The Nasdaq Stock Market, Inc. v. Vidudala Prasad, WIPO Case No. D2001-1493 with further references).

The Panel therefore considers the Domain Name in question to be confusingly similar to the trademarks ALAMO in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has no rights in the Domain Name since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks. Furthermore, the Respondent has no legitimate interest in the Domain Name since there is no indication that the Respondent is commonly known by the name "ALAMO" or "Alomaalamo" nor that the Respondent is using the Domain Name in connection with a bona fide offering of related goods or services. For the latter, as the panel in Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe, WIPO Case No. D2007-1695 stated correctly, it must be noted that the use of a domain name confusingly similar to a complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use. Also a non commercial or fair use is not noticeable.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

The Respondent must have been well aware of the Complainant and its trademarks dating back to 1977 when registering the Domain Name and using the domain name in connection with inter alia rental services. The Complainant had not authorized the Respondent to make use of its mark. This Panel does not see any conceivable legitimate use that could be made by the Respondent of this particular domain name without the Complainant's authorization.

In sum, the circumstances of this case clearly indicate that the Respondent registered the Domain Name primarily with the intention of attempting to attract, for commercial gain, Internet users to a potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such potential website or location, or of a product or service on such website or location.

The Panel therefore considers the Domain Name to have been registered and used in bad faith in accordance with 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. **ALOMAALAMO.COM**: Transferred

PANELLISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2011-05-05

Publish the Decision