Decision for dispute CAC-UDRP-100922

Case number	CAC-UDRP-100922
Time of filing	2015-02-25 11:27:07
Domain names	stanstedaudi.com, audichingford.com, audi-colchester.com, southendaudi.com, audi-southend.com, audi-chelmsford.com, haroldwoodaudi.com, audi-haroldwood.com, harold-wood-audi.com, audisouthend.com, chelmsford-audi.com, haroldwood-audi.com, southend-audi.com, colchester-audi.com, audi-harold-wood.com, audiharoldwood.com, chingfordaudi.com, audi-stansted.com, audistansted.com, stansted-audi.com, colchesteraudi.com, chelmsfordaudi.com, audichelmsford.com, audicolchester.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	VOLKSWAGEN GROUP UNITED KINGDOM LIMITED

Complainant representative

Organization	Shoosmiths LLP

Respondent

Name	Ravi Beefnah

OTHER LEGAL PROCEEDINGS

There is a case pending involving the Essex Audi Group, but not directly Volkswagen Group United Kingdom Limited. No evidence showing this proceeding includes the domain names has been entered.

IDENTIFICATION OF RIGHTS

Complainant is a licensee of the company Audi AG and is entitled to exploit and defend the trademark AUDI.

Complainant therefore has rights on the community trademark AUDI, dated of December 1, 1999.

FACTUAL BACKGROUND

The trademark AUDI dates back to 1999.

The domain names in dispute were registered in September and October 2014. They are all currently inactive.

No information was entered into evidence showing the Whois information or direction of the domain names at the time the Complaint was filed.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT: Complainant is the licensee of the trademark AUDI (hereinafter “the Trade Mark”), which has established very substantial goodwill and reputation. Each of the domain names incorporates the Trade Mark. The Trade Mark is the distinctive and predominant element of each and every one of the domain names.

The domain names each incorporate the word AUDI being identical to the Trade Mark in which Complainant has rights.

Complainant has not authorised, licensed or consented to Respondent’s use of the Trade Mark or the domain names and the Respondent is not known by the mark AUDI or anything similar or derivative thereof. There is no evidence of the Respondent’s use of, or demonstrable preparations to use, the domain names in connection with a bona fide offering of goods or services. In consideration of the history between the parties, Complainant believes that Respondent's clear intention is to unfairly disrupt the Complainant's business by using the domain names to make misleading, false and defamatory statements or to extort money from the Complainant, or both.

Also, Respondent has engaged in a pattern of registration of domain names which corresponds to a well known trade mark in which the Respondent has no rights, and in which the Respondent has no legitimate interest; in this instance, 25 domain names each incorporating the Trade Mark.

RESPONDENT: The registration of the domain names is for the purpose of free speech. Respondent states that the purchase was conducted in good faith to alert people of the pending USA court ruling and on going engine problems people are facing regarding a certain Audi engine. He considers that he is not copying or selling the Audi trademark in any way just providing information and voicing an opinion which people might value.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are 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).

Each one of the domain names in dispute comprises the trademark AUDI, associated with geographical terms, separated or not by a hyphen.

In many WIPO decisions, Panels have considered that the incorporation of a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to Complainant’s registered mark (WIPO Case No. D2010-1059, RapidShare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin and WIPO Case No. D2011-0154, VIVENDI v. vivendi-mena.com Private Registrant/ Mr. Arshad Mohamed).

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 Names (within the meaning of paragraph 4(a)(ii)of the Policy).

Respondent has no rights on the trademark AUDI and was not authorized to use the trademark or register these domain names.

The disputed domain names are not being used for a bona fide offering of goods and services.

Respondent argues with freedom of speech to justify the registration of the disputed domain names. However, in the several months he has owned the domain names, he has not displayed any “information or voicing an opinion which people might

value".

As there is no website, the main condition required for free speech to be considered as a legitimate interest is the genuine noncommercial practice. Though it is unclear whether the domain names are also involved in the pending court proceedings, the email produced by Complainant involving a settlement offer does show that the domain names are being offered to Complainant for a price much higher that the registration costs.

Respondent has not clearly shown that his actions are completely unrelated with the attempt of commercial gain.

The Panel has reviewed the WIPO Overview of WIPO Panel Views on Selected UDRP Questions ("WIPO Decision Overview"). The WIPO Decision Overview acknowledges that there is a split among Panels on the question of whether a criticism site can qualify as a legitimate or fair use when it is located at a domain name that is identical to the Complainant's trademark (See WIPO Decision Overview, § 2.4).

Where the disputed domain name is not identical to the trademark at issue (i.e., trademark.tld), but rather includes other words (i.e., trademarkplus.tld), it is not yet clear whether the same split applies. Indeed, Covance, Inc. v. Covance Campaign, (WIPO Case No. D2004-0206) stands for the proposition that certain domain names deemed confusingly similar under the UDRP may be fairly used for noncommercial criticism sites.

However, in the present case the domain names are not exploited for criticism or free speech. Additionally, it is not immediately apparent to Internet users that the domain name is not operated by the trademark owner. There is no indication on the website informing Internet users that they are not Complainant's websites and domain names.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

Bad faith registration: Respondent has registered the 25 domain names in dispute as well as several identical or similar domain names in the <.co.uk> ccTLD.

Though he argues that his aim is to voice his opinion, it does not explain the registration of this many domain names, all of which comprise the AUDI trademark.

This pattern of conduct constitutes evidence of bad faith registration (WIPO Case No. D2009-0798, <wikipeadia.com>, Wikimedia Foundation Inc. v. Kevo Ouz a/k/a Online Marketing Realty). Freedom of speech is not sufficient to justify the extent to which the AUDI trademark has been reproduced.

Bad faith use: The disputed domain names are currently inactive. This lack of use does not prevent the experts of finding bad faith through passive holding (WIPO Case No. D2000-0003, <telstra.org>, Telstra Corporation Limited v. Nuclear Marshmallows).

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

Respondent has registered abusively numerous domain names reproducing the trademark AUDI on which he has no rights. Despite the free speech argument raised by Respondent, no actual showing of such use was made, thus preventing the finding of a legitimate interest. Finally, the domain names in dispute are currently inactive, which is interpreted here as passive holding, evidencing Respondent's bad faith.

Therefore, the domain names in dispute are to be transferred to Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **STANSTEDAUDI.COM**: Transferred
2. **AUDICHINGFORD.COM**: Transferred
3. **AUDI-COLCHESTER.COM**: Transferred
4. **SOUTHENDAUDI.COM**: Transferred
5. **AUDI-SOUTHEND.COM**: Transferred
6. **AUDI-CHELMSFORD.COM**: Transferred
7. **HAROLDWOODAUDI.COM**: Transferred
8. **AUDI-HAROLDWOOD.COM**: Transferred
9. **HAROLD-WOOD-AUDI.COM**: Transferred
10. **AUDISOUTHEND.COM**: Transferred
11. **CHELMSFORD-AUDI.COM**: Transferred
12. **HAROLDWOOD-AUDI.COM**: Transferred
13. **SOUTHEND-AUDI.COM**: Transferred
14. **COLCHESTER-AUDI.COM**: Transferred
15. **AUDI-HAROLD-WOOD.COM**: Transferred
16. **AUDIHAROLDWOOD.COM**: Transferred
17. **CHINGFORDAUDI.COM**: Transferred
18. **AUDI-STANSTED.COM**: Transferred
19. **AUDISTANSTED.COM**: Transferred
20. **STANSTED-AUDI.COM**: Transferred
21. **COLCHESTERAUDI.COM**: Transferred
22. **CHELMSFORDAUDI.COM**: Transferred
23. **AUDICHELMSFORD.COM**: Transferred
24. **AUDICOLCHESTER.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2015-04-13

Publish the Decision