Decision for dispute CAC-UDRP-103443

Case number	CAC-UDRP-103443
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Domain names	renson.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Renson Ventilation NV

Complainant representative

Organization	BAP IP BV - Brantsandpatents

Respondent

Organization	Domains By Proxy, LLC

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

EUTM registration No. 013430293 RENSON, registered on 20 March 2015.
International registration No. 881631 RENSON, designating China, Russia, Switzerland and Turkey, registered on 10 March, 2006.
International registration No. 1337007 RENSON, designating Australia, China, India, Indonesia, Japan, Malaysia, New Zealand, Norway, Singapore, the United States and Vietnam, registered on 29 September, 2016.
US registration No. 79139041 for the device mark RENSON registered on October 21, 2014.
Benelux word and device mark RENSON INNOVATION IN VENTILATION, registered on 8 July, 1993 in the name Renson Sunprotection-Projects.

FACTUAL BACKGROUND

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

The Complainant, founded by Polydore Renson in 1909, is the Belgian company RENSON VENTILATION NV, a manufacturer of ventilation products, solar shading, façade cladding and outdoor home constructions such as pergolas, carports or wall

slidings. The Complainant's products have been sold in many countries around the world for many decades. Its main worldwide web site <renson.eu/gd-gd> contains additional information on its activities and on the RENSON brand.

The Complainant is a well know company and the RENSON brand is a well-known brand. The company has more than 100 years' experience in building construction, over 50 years in aluminium and over 30 years in ventilation. With a sales team of over 100 people and a network of partners worldwide, it is active Europe, but also in Eastern-Europe, America, China, India and in the Middle-East.

As a true innovator, the Complainant has won countless awards for its products, including – in the year 2018 alone - Red Dot Design awards, as given by the Design Zentrum Nordrhein Westfalen in Essen, Germany, and iF Design awards, design competition organized by the iF International Forum Design GmbH from Hanover, Germany. Reports regarding these awards and the Complainant's innovations circulated on a worldwide basis, showing how the far-reaching use of RENSON has created even more consumer awareness.

The Complainant holds numerous registrations for the word mark RENSON and for device marks incorporating that word. The disputed domain name is identical to the Complainant's registered trademark RENSON.

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 not, 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. Nevertheless, the Panel notes that emails to the two email addresses to which the notice of the Complaint were sent were not deliverable and that there is no evidence that the posted version of the complaint and its notification were delivered to the Respondent.

PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, to obtain transfer of a domain name, a complainant must prove the following three elements: (i) the respondent's 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 the domain name; and (iii) the respondent has registered the domain name and is using it in bad faith.

Under paragraph 15(a) of the Rules, "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

Identity or confusing similarity

The Complainant has shown that it has numerous trademark registrations for the word RENSON. The Panel finds that the <renson.com> domain name is identical to the Complainant's RENSON trademark, noting that the top-level suffix ".com", may be disregarded for the purpose of determining whether the disputed domain name is identical or confusingly similar. See Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525.

Legitimacy

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by a respondent, shall demonstrate rights to or legitimate interests in a domain name for purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the respondent of the dispute, the use by the respondent 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; or

(ii) the respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant says that the Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain name for the following reasons.

Before any notice of the dispute, the Respondent did not use the disputed domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services, nor are there any indications that the Respondent was preparing to use the disputed domain name in such a way. For the recorded past, the disputed domain name was not used to host any significant content, only featuring automatically generated pay-per-click links or referral pages.

The Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights. While there may exist people with rights in the name RENSON, it is highly implausible that the Respondent would be known by this name. This is supported by the fact that the disputed domain name is not actually used; the suspicious use of an identity-concealing service to register the disputed domain name; as well as the active protection by the Complainant of its trademark rights.

Moreover, the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to apply for or use any domain name incorporating its marks. In the course of business RENSON can be considered to be an invented word, and as such it is not a name which traders would legitimately choose unless seeking to create an impression of an association with the Complainant.

The Respondent is not 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 trademark or service mark at issue. There is nothing in the (inactive) use of the disputed domain name by the Respondent that could lead the Complainant to believe that there is any intention to use the disputed domain name in a legitimate way. The automatically generated "Related Searches" tab even features links to searches for products covered by the Complainant's trademark registration and for which the Complainant enjoys a high reputation (Outdoor Furniture, Outdoor Patio Furniture, etc.). This is obviously misleading and could – as it probably has happened already – lead to consumer confusion and diversion.

The Panel notes that the disputed domain name was registered on January 17, 1997. It currently resolves to a parking page provided by GoDaddy, with what appear to be pay-per-click links to products, some of which are of the kind supplied by the Complainant.

These circumstances, coupled with the Complainant's assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that she does have rights or legitimate interests in the disputed domain name. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so.

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

Bad faith registration and use

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, i.e.

(i) circumstances indicating that the respondent has registered or 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 the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or

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

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

The disputed domain name currently resolves to a parking page provided by GoDaddy, with what appear to be pay-per-click links to products, some of which are of the kind supplied by the Complainant. As found by the learned panelist in SAP SE v. Domains by Proxy, LLC / Kamal Karmakar, WIPO Case No. D2016-2497 (January 30, 2017): "It is generally accepted that the linking of a domain name to a webpage which contains third party material, even if automatically generated, can support a finding of bad faith".

Accepting for present purposes that the current use of the disputed domain name constitutes bad faith use of the kind described in paragraph 4(b)(iv) of the Policy, the critical issue in this administrative proceeding is whether such use is sufficient to justify a finding that the disputed domain name was registered in bad faith. Bad faith use of the kind identified in paragraph 4(b)(iv) of the Policy is evidence of both bad faith registration and bad faith use but such evidence is not necessarily conclusive, since it may be weighed against any evidence of good faith registration. See Passion Group Inc. v.Usearch, Inc., eResolution Case No. AF-0250, followed in Viz Communications, Inc., v. Redsun dba www.animerica.com and David Penava, WIPO Case No. D2000-0905.

The Complainant has shown that it holds the following registrations for the word mark RENSON: EUTM registration No. 013430293, registered on 20 March, 2015; International registration designating China, Russia, Switzerland and Turkey, registered on 10 March, 2006; and International registration No. 1337007 designating Australia, China, India, Indonesia, Japan, Malaysia, New Zealand, Norway, Singapore, the United States and Vietnam, registered on 29 September, 2016.

The Complainant also holds US registration No. 79139041 for the device mark RENSON registered on October 21, 2014.

The Complaint includes a list of numerous other word and device marks incorporating the word RENSON which the Complainant says were registered by the Complainant in many countries, only one of which was applied for prior to the registration of the disputed domain name on January 17, 1997. This was the Benelux word and device mark RENSON INNOVATION IN VENTILATION, filed on 8 July, 1993 in the name Renson Sunprotection-Projects.

It thus appears from the evidence provided with the Complaint that the only mark claimed by the Complainant to have been registered by it prior to the registration of the disputed domain name on January 17, 1997 is the Benelux word and device mark, in which the word RENSON is the most prominent element.

There is no evidence from which it may be inferred that the Respondent, in the United States, would have been aware of the Complainant's registered Benelux mark when registering the disputed domain name.

The question therefore arises whether the Complainant had established unregistered or common law trademark rights in the word RENSON prior to the registration of the disputed domain name. The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") sets out at section1.3 what a complainant needs to show to successfully assert unregistered or common law trademark rights, as follows:

"To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys…"

While not explicitly claiming common law trademark rights, the Complainant asserts that its products have been sold in many countries around the world for many decades; that the Complainant started using the name "by all accounts" in 1909; and that, due to its long lasting and intensive use since 1909 the brand RENSON is to be considered as a reputed brand. The Complaint includes evidence of numerous awards it has received.

The Complainant contends that it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's wide reputation in the field of building construction, ventilation and outdoor at the time of registration of the disputed domain name, whilst conceding that there may exist people with rights in the name RENSON. The Complainant cites Virgin Enterprises Limited v. Cesar Alvarez, WIPO Case No. D2016-2140, <virginmedia.shop>. In that case it was found that when the disputed domain name was registered by the Respondent the trademarks VIRGIN – and its variations, including VIRGIN MEDIA – were already well-known and directly connected to the Complainant's activities.

The Panel accepts that the Complainant's business was founded in 1909 in the name of its founder, Polydor Renson. However, the only evidence provided by the Complainant as to the reputation of the Renson name as a trademark shows that the Complainant received numerous awards in 2018 and 2019. There is no evidence demonstrating acquired distinctiveness of the Renson name as a trademark prior to the registration of the disputed domain name nor, as mentioned, does the Panel have reason to infer that the Respondent would have been aware of the Complainant's registered Benelux mark RENSON INNOVATION VENTILATION when registering the disputed domain name.

Under these circumstances the Panel does not consider the use of a privacy service in the present case as evidence of bad faith.

A Google search conducted by the Panel shows the Respondent as President of a domestic limited liability company, Renson, L.L.C. registered on October 27, 1999 at the Respondent's address, 503 E Ramsey Rd San Antonio, TX 78216, which is also an address of a car dealership, Renson Enterprises Ltd. Accordingly, there are plausible reasons why the disputed domain name might have been registered by the Respondent without knowledge of or intent to target the Complainant or its

RENSON mark.

Having regard to all the circumstances of this case, the Panel finds that the Complainant has not established that the disputed domain name was registered in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **RENSON.COM**: Remaining with the Respondent

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2021-01-15

Publish the Decision