Decision for dispute CAC-UDRP-105337

Case number	CAC-UDRP-105337
Time of filing	2023-04-06 08:35:25
Domain names	xcarb.org, xcarb.tech

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Adam Ayres

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks consisting of the term “XCARB” including:

Territory	Designations	Trademark	Registration No.	Filing/ Priority Date	Registration Date	Expiry Date	Class(es)
EU		XCARB	018383608	27/01/2021	18/06/2021	27/01/2031	4,6,12,36,40,42,45
US		XCARB	6886560	27/01/2021	01/11/2022	09/04/2031	4,6,12,36,40,42,45
WO	BA-BR-CA-CN-GB-IN-JP-KZ-MX-RU-TR-UA-US		1610773	27/01/2021	09/04/2021	09/04/2031	4,6,12,36,40,42,45

Further, the Complainant has registered several domain name variants including the “xcarb” denomination including <xcarb.net> and <xcarb.green> which were both registered on March 5, 2021.

FACTUAL BACKGROUND

According to the information on the case file, the Registrar confirmed that the Respondent is the current registrant of the disputed domain names and that the language of the registration agreement is English.

FACTS ASSERTED BY THE COMPLAINANT:

The Complainant is the largest steel producing company in the world and the market leader in steel for use in automotive, construction, household appliances and packaging. The Complainant produced 69.1 million tonnes of crude steel in 2021, and has approximately 158,000 employees.

Since around 2020, The Complainant has brought together under its XCarb® umbrella brand its reduced, low and zero-carbon products and steelmaking activities, as well as wider initiatives and green innovation projects. Alongside the XCarb® brand, the Complainant has launched three XCarb® initiatives: the XCarb® innovation fund, XCarb® green steel certificates and XCarb™ recycled and renewably produced for products made via the Electric Arc Furnace route using scrap.

On March 2, 2023, the Respondent Adam Ayres, an individual located in Canada, registered the disputed domain names <xcarb.org> and <xcarb.tech>.

The disputed domain names do not resolve to active content.

FACTS ASSERTED BY THE RESPONDENT:

For ease of understanding and to distinguish from the Complainant, the Panel uses the third person masculine pronoun (“he” or “his”) to refer to the Respondent.

The Respondent operates a business in Canada called Grow the Good, Inc which is focussed on accelerating decarbonization technologies and has an online presence through the domain name <growthegoodcanada.com>.

The Respondent acquired the two disputed domain names to support a local Canadian and global decarbonization initiative, because he has “a background in renewable energy technologies and thought the xcarb name described my planned efforts well”.

The Respondent asserts that he did not intend to take advantage of or profit in any way from the Complainant’s brand. To explain his reason for acquiring the domain names the Respondent claims, “It was my intent to bring more attention to the good works of decarbonizing the planet, through my own established business(es).” The Respondent asserts that he has legitimate interests in using the disputed domain names through his related businesses in Canada. The Respondent firmly denies that he registered the disputed domain names in bad faith.

THE COMPLAINANT’S SUPPLEMENTAL FILINGS:

The Complainant filed unsolicited supplemental filings subsequent to the Respondent’s Response.

The UDRP Rules only provide for the submission of the complaint by the complainant, and the response by the respondent. No provision is made for supplemental filings by either party, except in response to a deficiency notification or if requested by the panel. Thus the admissibility of any unsolicited supplemental filings is subject to the discretion of the panel, taking into account the panel’s obligation under UDRP Rule 10(b) to “ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case“. Section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) states “Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel” and “panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some “exceptional” circumstance)”.

The Panel agrees with the consensus view that unsolicited supplemental filings should be accepted only in exceptional circumstances. The Panel finds – for the most part – the Complainant’s supplemental filing contains information which must be rejected because there is no apparent or proposed reason why such information could not have been provided in the Complaint. Accordingly, the Panel does not admit the Complainant’s supplemental filing save for the Complainant’s claim that the Respondent is a competitor. The Complainant’s claim that the Respondent is a competitor shall be admitted because the Complainant could not have known that the Respondent would assert in his Response that he has “a background in renewable energy technologies“, and has a business “focused on accelerating decarbonization technologies“ when preparing its Complaint. Thus, regarding the Complainant’s supplemental filings, solely the issue of whether the Respondent is a competitor - as asserted by the Complainant - is taken into consideration by the Panel.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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).

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 names (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 names have been registered and are 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

THREE ELEMENTS COMPLAINANT MUST ESTABLISH UNDER THE POLICY

According to Paragraph 4(a) of the Policy, the complainant is required to prove each of the following three elements to obtain an order that a disputed domain name should be transferred or cancelled:

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

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

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAMES TO THE COMPLAINANT'S RIGHTS

The first element of the Policy requires the Complainant to have rights to a trademark or service mark which is identical or confusingly similar to the disputed domain names.

Sufficient evidence has been submitted by the Complainant of its registered and pending registration trademark rights in the term XCarb® in classes 4, 6, 12, 36, 40, 42, 45 including for fuels, metals including steel, brokerage of carbon offsets and trading of emissions certificates, treatment of metals, scientific and technological services in the field of metallurgy, licensing in relation to emissions certificates for carbon production and more. Such trademark rights were created and registered prior to March 2, 2023, the creation date of the disputed domain names. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Accordingly, the Panel finds that the Complainant possesses rights in its XCarb® trademarks such that it has standing under the Policy.

The top level domain ("TLD") may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration (see Paragraph 1.11.1 WIPO Overview 3.0). Hence the TLDs ".org" and ".tech" may be disregarded for the purpose of determining this first element, and only the "XCARB" portion included in both disputed domain names shall be considered.

CONCLUSION - FIRST ELEMENT

The Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain names are identical to the Complainant's XCarb® marks. The Respondent does not contest this first element under the Policy.

Accordingly, the Complainant has satisfied the first element of the Policy.

(B) THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAMES

The second element of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests in the disputed domain names. The generally adopted approach, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy; see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.

However, the burden of proof still remains with the Complainant to make out its prima facie case on a balance of probabilities; see, for example, CAC Case No. 102263, Intesa Sanpaolo S.p.A. v Ida Ekkert. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the domain name in issue. Simply establishing that the complainant also has rights in the domain name in issue is insufficient.

The Complainant's prima facie case

The Panel finds that the Complainant made out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Complainant asserts that the Respondent is not commonly known by the disputed domain names, is not in any way related to the Complainant, nor has the Respondent been granted an authorization or license to use the disputed domain names by the Complainant. Further, the Complainant provides evidence that the disputed domain names contain no active content and asserts that there is no apparent evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. As the Complainant thus makes out its prima facie case, the burden shifts to the Respondent to demonstrate rights or legitimate interests in the domain names, although the overall burden in the case remains with the Complainant.

The Respondent's rebuttal of the Complainant's prima facie case

As noted above, the Respondent does not rebut the Complainant's assertions that he is not commonly known by the disputed domain names nor authorized to use the XCarb® mark. Nor does the Respondent provide adequate evidence that he has made any use or demonstrable preparations to use the disputed domain names. Paragraph 2.2 WIPO Overview 3.0 sets out a non-exhaustive list of examples of prior use or demonstrable preparations to use in connection with a bona fide offering of goods or services. The list mentions: "(i) evidence of business formation-related due diligence/legal advice/correspondence, (ii) evidence of credible investment in website development or promotional materials such as advertising, letterhead, or business cards (iii) proof of a genuine (i.e., not pretextual) business plan utilizing the domain name, and credible signs of pursuit of the business plan, (iv) bona fide registration and use of related domain names, and (v) other evidence generally pointing to a lack of indicia of cybersquatting intent. While such indicia are assessed pragmatically in light of the case circumstances, clear contemporaneous evidence of bona fide pre-complaint preparations is required." Here, the only evidence provided by the Respondent with respect to demonstrable preparations for use is the link to his business website https://www.growthegoodcanada.com/ ("Respondent's Website"). The Respondent Website homepage heading text reads "Accelerating the Sustainable Future. The Race to the Low-Carbon Future is on!". The Panel review the Respondent's Website and found it includes a mention of "decarbonization technologies", however no mention of "XCARB" or "EXCARB" or "X CARB" similar denominations was identified. Other than the link to the Respondent's Website no other evidence was submitted by the Respondent, but rather he merely submitted an unsupported assertion "I purchased the 2 domains in question on March 2nd in response to an initiative I am spearheading to focus on decarbonization effort in Hamilton, Ontario, Canada and globally." Due to the lack of clear, contemporaneous evidence of bona fide pre-complaint preparations to use, the Respondent has failed to meet the Respondent's burden of rebuttal. While there is some limited evidence the Respondent is involved with a business in the field of sustainability, the Panel does not regard these circumstances as sufficient to show the Respondent's use of the two specific disputed domain names "in connection with a bona fide offering of goods or services" under the Policy.

The Panel considered whether it would be appropriate to issue a procedural order, inviting the Respondent to provide evidence to support his claims of legitimacy. The Panel has such powers at its discretion in accordance with Paragraph 12 of the UDRP Rules, giving consideration to the Panel's overarching responsibility to ensure that each party is treated with equality and has a fair opportunity to present its case as required under Paragraph 10 of the UDRP Rules. However, in this instance, the Panel determined it was not necessary to issue such a procedural order, because the Respondent by his own admission, indicated that his plans for the disputed domain names are related to the Complainant's XCarb® trademark which is registered in several countries in some seven classes. The Respondent's claimed purpose for the disputed domain names referred to a desire to use them for a decarbonization initiative in "Canada and globally". Panel notes that the Complainant's Canadian designation of its International Registration of XCarb® is currently pending, with the application date pre-dating the registration date of the disputed domain names. From a "global" perspective, the Complainant clearly has prior established rights over the XCARB term, such that would inhibit the Respondent's claimed intended use, rendering it non-bona fide. On the other hand, if the Respondent had indicated that he proposed to use the disputed domain names for a purpose unrelated to the Complainant's mark, a procedural order to request further evidence of demonstrable preparations to use the same may have been appropriate. As no such unrelated purpose was indicated in the Response, there is no persuasive reason in this case to invite the Respondent to submit further evidence. As relevantly stated in Paragraph 2.10.1 of WIPO Overview 3.0, "Panels have recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term/phrase will not necessarily suffice. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights.

For example, a hypothetical respondent may well have a legitimate interest in the domain name <orange.com> if it uses the domain name for a website providing information about the fruit or the color orange. The same respondent would not however have a legitimate interest in the domain name if the corresponding website is aimed at goods or services that target a third-party trademark (in this example: Orange, well-known inter alia for telecommunications and Internet services) which uses the same term as a trademark in a non-dictionary sense."

According to Merriam-Webster online dictionary, the term "carb" is slang for "carburettor" or is used as a shortened form of "carbohydrates". The Respondent advises that he does not intend to use the disputed domain names for any purpose related to such dictionary meanings but rather intends to use the disputed domain names for purposes which are closely related to the Complainant's trademark use of the XCARB term, which enjoys considerable presence and fame on-line as shown by the results of the Google search. While it is beyond the Panel's scope to make any determination regarding potential infringement under applicable trademark law, the aforementioned "orange.com" hypothetical example of legitimate use for a website providing information about the fruit is not applicable in this instant case, as there is no evidence of use of the disputed domain names and, further, the Respondent did not provide sufficient evidence that would substantiate demonstrable preparation to use the disputed domain names. Thus, the Respondent failed to meet the evidentiary burden necessary to rebut the Complainant's prima facie case.

CONCLUSION - SECOND ELEMENT

The Complainant made out its prima facie case under Paragraph 4(a)(ii) of the Policy, and the Respondent did not provide evidence sufficient to rebut it.

Accordingly, the Complainant has satisfied the second element of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAMES

The Panel concludes that the requirements of paragraph 4(a)(iii) of the Policy have been sufficiently made out by the Complainant and that the Respondent's bad faith registration and use of the disputed domain names have been proven.

The third element requires the Complainant to show that the disputed domain names have been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. Hallmark Licensing, LLC v. EWebMall, Inc., WIPO Case No. D2015-2202 ("The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.").

It is clear from the terms of paragraph 4(a)(iii) of the Policy as well as confirmed by numerous decisions under it that the two elements of this third requirement are cumulative; both registration and use in bad faith must be proved for a complaint to succeed. See, for example, WIPO Case No D1999-0001 World Wrestling Federation Entertainment, Inc. v. Michael Bosman, WIPO Case No D2000-0003 Telstra Computers Ltd v. Nuclear Marshmallows, and WIPO Case No D2010-0800 A. Nattermann & Cie. GmbH and Sanofi-aventis v. Watson Pharmaceuticals, Inc.

Registration in bad faith

The Complainant alleged that due to the known quality of its XCarb® mark - as evidenced by the Google search results included with the Complaint - it is "inconceivable" that the Respondent did not have actual knowledge of the Complainant's marks at the time the disputed domain names were registered. The Complainant contends that the disputed domain names are inactive, and there is no plausible use of such domain names that would not be illegitimate. Additionally, the Complainant asserts that because the disputed domain names were set up with MX records, they could be used for email purposes and such ability to use emails is indicative of bad faith.

In response to these allegations, the Respondent submitted "If a domain is legally protected it should not be available for purchase on a domain website, or the so called (by Arcelor Mittal) "well known" association of the domain should have been registered by Arcelor Mittal since they should have the foresight to make it unavailable if they have so well established as they say. It never entered my mind to discredit or take advantage of Arcelor Mittal, their name, brand or anything of the like. I never intended, nor intend to profit of of [sic] any association of Arcelor Mittal's brand/name/etc.. It was my intent to bring more attention to the good works of decarbonizing the planet, through my own established business(es). I am greatly offended at the nature of the claims made in this document that I have acted in bad faith as you do not know me or my intentions. Shame on them!"

Additionally, it its supplemental filing, the Complainant asserts that the Respondent is a competitor of the Complainant.

It is clear that there is no obligation on rights-holders to make all domain names including their trademarks unavailable for purchase. Such a requirement would be nigh on impossible given the almost infinite number of potential variations of domain names with the potential to infringe such rights. Thus, the fact that the disputed domain names were available for purchase does nothing to bolster the Respondent's case. The Respondent does not claim that he did not know about the Complainant and its marks at the time of registering the disputed domain names.

Even if the Respondent did not know about the Complainant and its XCarb® mark at the time of registering the disputed domain names, there is no excuse if he was "willfully blind" to investigating whether prior rights existed. Guidance regarding this issue is provided in Paragrah 3.2.3 WIPO Overview 3.0 which states "Noting registrant obligations under UDRP paragraph 2, panels have however found that respondents who (deliberately) fail to search and/or screen registrations against available online databases would be responsible for any resulting abusive registrations under the concept of wilful blindness; depending on the facts and circumstances of a case, this concept has been applied irrespective of whether the registrant is a professional domainer."

In this regard, Paragraph 2 of the Policy provides that a registrant is responsible for determining whether a domain name registration infringes or violates someone else's rights. Thus, there is an implicit requirement of good faith effort on the part of registrants to avoid infringing domain name registrations. See, for example, WIPO Case No. D2008-1216 Balglow Finance S.A., Fortuna Comércio e Franquias Ltda. v. Name Administration Inc. (BVI), "The Panel notes that paragraph 2 of the Policy implicitly requires some good faith effort to avoid registering and using domain names corresponding to trademarks in violation of the Policy".

Unrefuted evidence submitted by the Complainant shows that when the term "XCARB" is entered in the Google search engine, the returned results are exclusively or primarily associated with the Complainant. Further, "XCARB" Google search results show the XCarb® mark reproduced in various contexts related to the Complainant's business including the respective trademark symbols ® and ™. Thus, even the most cursory Google search reveals the Complainant's use of the XCARB denomination as a trademark and claim of rights thereto. The Respondent could have easily performed such an easy and readily available Google search himself. Moreover, as noted above, the Respondent does not claim that he did not know about the Complainant and its marks at the time of registering the disputed domain name. Rather the Respondent merely asserted, "I never intended, nor intend to profit of of [sic] any association of Arcelor Mittal's brand/name/etc.".

Regardless of the Respondent's claimed intentions, the fact remains that he was obliged, under the policy, to avoid registering and using domain names corresponding to trademarks. In this case, "XCARB" is not a dictionary term or commonly used phrase. As noted above, according to Merriam-Webster online dictionary, the term "carb" is slang for "carburettor" or is used as a shortened form of "carbohydrates". As freely admitted by the Respondent, he registered the disputed domain names to be used in connection with his background in renewable technologies. The Respondent makes no claim to intend to use the disputed domain names for their commonly understood or "primary" meaning, which would be more plausible if he proposed to use same in relation to carburettors or carbohydrates, notwithstanding the fanciful inclusion of the "X" in the Complainant's trademark. In conclusion on this point, the Panel finds that because "XCARB" is a non-dictionary word or term which could be quickly and easily identified as the Complainant's trademark through a Google search or a search of online trademark registers published by intellectual property offices such as WIPO, USPTO and the EUIPO, the Respondent either knew or should have known of the Complainant's prior rights in the mark, at the time he registered the disputed domain names. Such actual or constructive knowledge of the Complainant's trademarks prior to the registration of the disputed domain names supports a finding of bad faith registration.

Use in bad faith

The Complainant alleged, and the Respondent does not deny, that the disputed domain names are inactive. It is well-established that non-use or "passive holding" of a domain name does not prevent a finding of bad faith (see, for example, Paragraph 3.3, WIPO Overview 3.0). Panels are obliged to consider the totality of circumstances in each case but as held in the oft-cited WIPO Case No. 2000-003 Telstra Corporation Limited v. Nuclear Marshmallows, cases where passive holding may be found to constitute bad faith may relevantly include where (i) the complainant's trademark has a strong reputation and is widely known, (ii) the respondent has provided no evidence of actual or contemplated good faith use by it of the domain name, (iii) "it is not possible to conceive of any plausible actual or contemplated active use of the domain name 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." The Panel finds the above three mentioned factors to be applicable in this case. Regarding (i), the Google search results evidence shows a pervasive online presence of the Complainant's mark including use of trademark symbols ® and ™, and such an easy and readily available search would clearly be within the Respondent's "responsibility to determine whether your domain name registration infringes or violates someone else's rights" under Paragraph 2 of the Policy. Regarding (ii) as described in detail in Section (B) of this Decision above, the Respondent provided insufficient evidence of actual or contemplated good faith use of the disputed domain names. Lastly regarding (iii) while there could potentially be plausible actual or contemplated uses of the disputed domain names that would not be illegitimate – just for example, for a carburettor related business - the Respondent has excluded such use by his own admission that his purpose is related to decarbonization, which is closely related to the Complainant's XCarb® mark and its business, brand, and initiatives thereunder. Therefore, in light of these three applicable factors, Panel finds that the Respondent's passive holding of the disputed domain names constitutes bad faith.

Review of the Respondent's cited prior decisions

As a final matter, the Panel considered the five cases cited by the Respondent which he asserts "set a precedent for my situation":

1. In Sampo Insurance Company Plc and Leonia Plc v. Caspar Callerstrom WIPO Case No. D2000-0864 the panel held in favour of the complainant, finding bad faith on the part of the respondent, who did not submit a response. Accordingly, this Panel found that case to be neither relevantly analogous nor supportive of the Respondent's position in the instant proceedings.
2. In Ubid, Inc. v. Auction Block, Inc. WIPO Case No. D2002-0520 the panel held in favour of the complainant, finding bad faith on the part of the respondent, who did submit a response but one which the panelist found to be unpersuasive. Accordingly, this Panel found that case to be neither relevantly analogous nor supportive of the Respondent's position in the instant proceedings.
3. In Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com" WIPO Case No. D2007-0847 where respondent did submit a response but one which the panelist found to be unpersuasive. Accordingly, this Panel found that case to be neither relevantly analogous nor supportive of Respondent's position in the instant proceedings.
4. In L'Oréal v. Transure Enterprise Ltd /Above.com Domain Privacy/Peter Smith WIPO Case No. D2013-1352, the panel held

in favour of the complainant, finding bad faith on the part of the respondent, who did not submit a response. Accordingly, this Panel found that case to be neither relevantly analogous nor supportive of the Respondent's position in the instant proceedings.

5. Lastly, Respondent cited CAC Case No 100049 but the Panel did not find a decision with this case reference.

It is not clear why the Respondent cited at least four cases which were decided in favour of the complainant rather than the respondent. Moreover, the Panel finds none of the above cases support the Respondent's position.

CONCLUSION - THIRD ELEMENT AND FINAL REMARKS

In conclusion the Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad faith in general under paragraph 4(a)(iii).

Accordingly, Complainant has satisfied the third and final element of the Policy.

The Panel's conclusions and decision is not intended to discourage the Respondent from pursuing legitimate business activities. Rather it highlights the importance and necessity of undertaking due diligence inquiries prior to registering any domain name. The Respondent failed to consider the Complainant's prior rights in its XCarb® trademark when he registered the disputed domain names, and now faces the consequences. While - if unchallenged - this UDRP proceeding will result in the transfer of the disputed domain names to the Complainant, it is not conclusive and does not preclude either party from seeking further legal action in a court of competent jurisdiction.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **xcarb.org**: Transferred
2. **xcarb.tech**: Transferred

PANELLISTS

Name	**Claire Kowarsky**

DATE OF PANEL DECISION 2023-05-07

Publish the Decision