

ADMINISTRATIVE PANEL DECISION

Averitt Express, Inc. v. Quan Zhongjun, Juanita Co.
Case No. D2022-3110

1. The Parties

The Complainant is Averitt Express, Inc., United States of America (“United States”), represented by Adams and Reese LLP, United States.

The Respondent is Quan Zhongjun, Juanita Co., China.

2. The Domain Names and Registrar

The disputed domain names <averittspress.com> and <averittexpeess.com> are registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 23, 2022. On August 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 25, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 25, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 26, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 26, 2022.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on September 29, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is one of the leading freight transportation and supply chain management providers in the United States, operating over 100 locations and providing services to over 300 international destinations in 100 countries.

Among others, the Complainant owns the following trademark registrations:

- United States Trademark Registration No. 2616865 for the word mark AVERITT EXPRESS, registered since September 10, 2002 in class 39 of the Nice Agreement Concerning the International Classification of Good and Services for the Purpose of the Registration of Marks (“Nice Agreement”); and
- Chinese Trademark Registration No. 25252236 for the word mark AVERITT, registered since July 7, 2018 for services of class 39 of the Nice Agreement.

The above-mentioned trademark registrations are hereinafter collectively referred to, in singular, as “the Trademark”.

The Complainant has online presence at “www.averittexpress.com”.

The disputed domain names were both registered on May 11, 2022, and have been used to resolve to parking pages, that are similar in appearance, containing pay-per-click (“PPC”) advertising links to third party websites offering, amongst other services, identical or similar services to those of the Complainant. The disputed domain names currently resolve to inactive websites.

5. Parties’ Contentions

A. Complainant

The Complainant states, in summary and in so far as relevant, the following.

The Complainant relies on its rights in the Trademark acquired through the above-mentioned registrations and its extensive use of it for many years in association with its well-known freight transportation business.

The Complainant contends that the disputed domain names are identical or confusingly similar to the Trademark. The first and most prominent element of both disputed domain names is the AVERITT mark.

Both disputed domain names also incorporate a close typo-variant of the AVERITT EXPRESS mark, each of which is virtually identical in appearance to the AVERITT EXPRESS mark. The disputed domain names each differ from the Complainant’s domain name <averittexpress.com>, by only one letter (either the “x” or the “r”).

The slight misspellings are insufficient to distinguish the disputed domain names from the Complainant’s Trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain names and is unable to rely on any of the circumstances set out in paragraph 4(c) of the Policy.

The Respondent's name is not "Averitt Express" or "Averitt Expees", and to the Complainant's knowledge, the Respondent is not, and has never been commonly known as "Averitt Express" or "Averitt Expees." The Respondent is not, and has never been a licensee or franchisee of the Complainant. Furthermore, the Respondent has never been authorized by the Complainant to register or use the Complainant's Trademark or to apply for or use any domain name incorporating the Trademark.

The Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services, or in a legitimate noncommercial or fair manner. As of the date of the Amended Complaint, the disputed domain names direct to parking pages featuring PPC advertising links to websites purportedly offering services identical or related to those of the Complainant, such as, "Ltl Services", "Trucking Company Software" and "Freight Companies".

The disputed domain names were registered and are being used in bad faith.

Given the trademark registrations for the Trademark, the Complainant's numerous domain names incorporating the Trademark (including <averittpress.com>), the Complainant's extensive use and advertising of the Trademark, and the international reach of the Complainant's service offerings, it is not plausible that the Respondent could have been unaware of the Complainant at the time of registration of the disputed domain names.

The Complainant and its predecessors have used the Trademark for over 50 years, and the AVERITT marks are highly distinctive and universally associated with the Complainant. The first result in a Google search for the term "Averitt" directs to the Complainant's website at "www.averittpress.com", and the first page of results all relate to the Complainant.

The Respondent's knowledge of the Complainant is further evidenced by the use of the disputed domain names to direct to parking pages showing PPC advertising links for websites purportedly offering services identical or related to those of the Complainant, such as such as "Ltl Services", "Trucking Company Software", and "Freight Companies". This is furthermore confirmed by the Respondent's choice of slight variations of the Complainant's <averittpress.com> domain name, which constitutes typosquatting, and is itself evidence of bad faith.

The disputed domain names are being used in bad faith to divert Internet users to commercial parking pages with links to websites purportedly offering services identical or related to those of the Complainant. By using the disputed domain names in this manner, the Respondent is using the Trademark as an appeal brand to attract the Complainant's customers, and then to encourage those customers, who would plausibly assume that the Complainant owned or endorsed the commercial parking pages, to visit other websites they might similarly assume were associated with the Complainant. The Respondent generates unjustified revenues for each click-through of the sponsored links, thereby illegitimately capitalizing on the Complainant's name and reputation. Such activity constitutes evidence of bad faith registration and use of the disputed domain names under paragraph 4(b)(iv) of the Policy.

Finally, the Respondent has demonstrated a pattern of conduct indicative of bad faith registration and use of domain names incorporating others' trademarks. A reverse Whois search reveals over 10,000 domain names registered to the Respondent's email address. A printout of the reverse Whois search has been provided as Annex 10 of the amended Complaint. The search results on the first page of this annex alone demonstrate that it is the Respondent's common practice to select domain names that are nearly identical to those used for trademark owners' official websites.

Such activity is evidence of bad faith use pursuant to paragraph 4(b)(ii) of the Policy.

The Complainant requests that the disputed domain names be transferred from the Respondent to the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided details of its trademark registrations for the Trademark, including the registrations in respect of which the details are set out above, and has thereby established its rights in the Trademark.

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by previous UDRP panels to be confusingly similar to the relevant mark for purposes of the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9).

The disputed domain names <averittspress.com> and <averittexpeess.com> consist of a misspelling of the Complainant's AVERITT EXPRESS mark. They also incorporate the entirety of the Complainant's AVERITT mark.

The generic Top-Level Domain ("gTLD") ".com" does not serve to distinguish the disputed domain names from the Trademark.

The Panel therefore finds that the disputed domain names are confusingly similar to the Trademark.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to show that the Respondent has no rights or legitimate interests in respect of the disputed domain names. Once the Complainant establishes a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain names (see [WIPO Overview 3.0](#), section 2.1).

In this particular case, the Complainant alleges that the Respondent lacks rights to or legitimate interests in the disputed domain names for the reasons set out in section 5.A above. The Panel finds that the Complainant has fulfilled the obligation to establish *prima facie* that the Respondent has no rights to or legitimate interests in the disputed domain names. Because of its failure to submit a response, the Respondent has not refuted the arguments of the Complainant and/or shown rights to or legitimate interests in the disputed domain names.

The Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain names, under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's Trademark was registered well before the registration of the disputed domain names. The AVERITT and AVERITT EXPRESS trademarks are distinctive and unique to the Complainant. Moreover, the term "Averitt" is not merely a word. Search results using the key word "Averitt" on the search engines direct Internet users to the Complainant and its services, which indicates that an exclusive connection between the AVERITT mark and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's Trademark when registering the disputed domain names or has exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith". See *eBay Inc. v. Renbu Bai*, WIPO Case No. [D2014-1693](#); and *Barclays Bank PLC v. Andrew Barnes*, WIPO Case No. [D2011-0874](#).

Section 3.1.4 of the [WIPO Overview 3.0](#) states that "mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith". In this case, the disputed domain names are misspelled variants of the Complainant's AVERITT EXPRESS mark, misspelling a letter to the word component "express". A minor typographical change by an unaffiliated entity to a distinctive trademark is a form of typosquatting, which creates a presumption of bad faith.

The Respondent has used the disputed domain names that fully reproduce the Complainant's inherently distinctive AVERITT mark and are misspelled variants of its distinctive AVERITT EXPRESS mark to host webpages displaying PPC links related to services in competition with those of the Complainant.

This in view of the Panel not only demonstrates that the Respondent was aware of the Complainant's Trademark at the time of registration of the disputed domain names, but also the Respondent's obvious intent to target the Complainant's Trademark through diverting Internet users, for commercial gain, to its websites (or websites under its control) without any authorization or rights to do so.

In addition, the Panel notes that the Respondent appears to be engaged in a pattern of abusive registration having registered other domain names comprising of other third parties' trademarks as described in section 5.A above.

The Respondent has kept silent in the face of the Complainant's allegations of bad faith.

Taking into account the aforementioned circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain names and, considering the Respondent's lack of rights or legitimate interests in the disputed domain names as discussed above, the Panel is led to conclude that the disputed domain names were registered and are being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied the third element under paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <averittespress.com> and <averittexpeess.com> be transferred to the Complainant.

/Richard C.K. van Oerle/

Richard C.K. van Oerle

Sole Panelist

Date: October 13, 2022