

ADMINISTRATIVE PANEL DECISION

Goldcar Spain S.L.U. v. David Tate, Herethereandeverwhere, Inc
Case No. D2022-0460

1. The Parties

The Complainant is Goldcar Spain S.L.U., Spain, represented by Taylor Wessing, United Kingdom.

The Respondent is David Tate, Herethereandeverwhere, Inc, United States of America.

2. The Domain Name and Registrar

The disputed domain name <goldcarmalaga.com> (the “Domain Name”) is registered with DNC Holdings, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2022. On February 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 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 February 19, 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 February 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 7, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on April 13, 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 specialises in car rental service. It has been operating for some 35 years and became in 2017 a subsidiary of Europcar Mobility Group. The Europcar Mobility Group operates across a network of 170 countries worldwide with approximately 200 airport locations in Europe and 600 around the World. The Complainant has over 100 offices located in Spain, Portugal, Italy, Andorra, Malta, France, Greece, Croatia, Netherlands, Cyprus, Malta, Serbia, Iceland, Ecuador, and the USA.

The Complainant owns trademark registrations in GOLDCAR, such as Spanish trademark registration number M3527840 filed on September 2014, and International registration number 1207823 filed on April 2014. The Complainant also owns the domain name <goldcar.es> registered on March 18, 2004. The Complainant's website also has a number of extensions for different territories and languages including French, Italian, German, Portuguese, Turkish, and Polish.

According to the Registrar, the Domain Name was registered on March 15, 2012, and last updated September 25, 2021.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations predating the registration of the Domain Name. The Complainant argues that the Domain Name is confusingly similar to the Complainant's trademark. The Domain Name contains the Complainant's trademark combined with "malaga". The addition of "malaga" is unlikely to mitigate risk of confusion, as it is the name of a location where the Complainant operates.

The Complainant asserts that the Respondent is not authorized to use the Complainant's trademark. The Respondent is not commonly known by the Domain Name. The Respondent cannot establish rights in the Domain Name, as it has not made any use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. The Domain Name has redirected to a webpage seemingly offering car rental services. According to the copyright notice on the webpage at "www.goldcarmalaga.com", the website has been developed by carhire.lu. The domain name <carhire.lu> redirects to "https://www.carhirelocator.com/", which appears to be owned by CHL Inc., Las Vegas; and CHL Ltd, London.

The Complainant believes the Respondent must have known of the Complainant's trademark when the Respondent registered the Domain Name. The Domain Name was registered many years after the establishment of the Complainant's well-known GOLDCAR trademark. The Complainant's trademark rights in GOLDCAR date back to 2003. The Complainant has been operating for at least 35 years. Furthermore, the Complainant argues that the apparent lack of active use of the Domain Name without any active attempt to sell or to contact the Complainant does not prevent a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademark GOLDCAR. The test for confusing similarity involves the comparison between the trademark and the Domain Name. In this case, the Domain Name incorporates the Complainant's trademark with the addition of the term "malaga". The addition does not prevent a finding of confusing similarity; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD") ".com"; see [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has made un rebutted assertions that it has not granted any authorization to the Respondent to register the Domain Name containing the Complainant's trademark or otherwise make use of its mark. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered trademark rights. The Respondent cannot establish rights in the Domain Name, as it has not made use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. The Respondent's use of the Domain Name appears to have been to redirect to a webpage seemingly offering car rental services. As the said use took place at a time when the Complainant clearly was established in the car rental industry, the Respondent's use of the Domain Name is not *bona fide*, but rather evidence of bad faith, see below.

The Panel finds that the Complainant has made out an un rebutted *prima facie* case. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Domain Name is confusingly similar to the Complainant's well-known trademark. The Respondent was likely to be aware of the Complainant when the Respondent registered the Domain Name. The Panel finds that it is probable that the Respondent has registered the Domain Name to resell it, and/or to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark.

The Respondent uses the Domain Name to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant and its trademark as to the source, sponsorship, affiliation, and/or endorsement of the Respondent's website. Moreover, the Respondent has not provided any evidence of actual or contemplated good faith use, nor provided any response at all in justification of the registration of the Domain Name.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 Domain Name <goldcarmalaga.com> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: April 22, 2022