

ADMINISTRATIVE PANEL DECISION

Carter Bank & Trust v. I.C.M

Case No. D2022-4748

1. The Parties

Complainant is Carter Bank & Trust, United States of America (“United States” or “U.S.”), represented by 101domain.com, United States.

Respondent is I.C.M, United States.

2. The Domain Name and Registrar

The disputed domain name <cartertrustbank.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 9, 2022. On December 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 13, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 Respondent of the Complaint, and the proceedings commenced on December 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 12, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on January 26, 2023. 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

Complainant owns the CARTER BANK & TRUST trademark, registered under U.S. Reg. No. 5,824,702 on August 6, 2019, in International Class 36 with a date of first use in 2006.

The disputed domain name was registered on September 27, 2022, and does not presently route to an active webpage.

UDRP panels have previously ordered transfer against Respondent in proceedings unrelated to the current proceeding. *Hochtief Aktiengesellschaft v. Privacy Protect, LLC (PrivacyProtect.org) / I.C.M.*, WIPO Case No. [D2022-2736](#); *Northern Data AG v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Ilo Chidera*, WIPO Case No. [D2021-1884](#).

5. Parties' Contentions

A. Complainant

Complainant avers that it was incorporated in 1974 and provides banking and financial services including online banking. Complainant avers that Respondent used the disputed domain name to route to a website that impersonated the style of Complainant's online banking website at "www.carterbankandtrust.com" for purposes of phishing. Complainant contends that Respondent has sought to collect the logon credentials and contact details of Complainant's customers through a contact form on the website to which the disputed domain name routed.¹

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's CARTER BANK & TRUST trademark, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

On the foregoing basis, Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

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

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#). In the absence of a Response, the

¹ The Complaint annexes screen shots of the web pages, including the contact form that Complainant contends was intended to trick users into sharing their contact and logon information with Respondent.

Panel may also accept as true the reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain name is confusingly similar to Complainant's CARTER BANK & TRUST mark.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or confusingly similar to a complainant's marks. See, e.g., *HUK-COBURG haftpflicht-Unterstützungs-Kasse kraftfahrender Beamter Deutschlands A.G. v. DOMIBOT (HUK-COBURG-COM-DOM)*, WIPO Case No. [D2006-0439](#); *VAT Holding AG v. Vat.com*, WIPO Case No. [D2000-0607](#); and *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#).

Omitting the ".com" TLD from the disputed domain name, the Panel notes that nearly the entire CARTER BANK & TRUST mark is included in the disputed domain name. The disputed domain name has simply reversed the order of the words "bank" and "trust" and omitted the "&".

The Panel finds that the dominant features of Complainant's trademark are easily recognizable in the disputed domain name. The Panel concludes therefore that the incorporation of these dominant features even in a reversed order does not prevent a finding of confusing similarity. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7 ("where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark").

The Panel therefore finds that the disputed domain name is confusingly similar to Complainant's mark.

The Panel concludes that the first element of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. The Policy, paragraph 4(c).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, after which the burden of rebuttal passes to the respondent. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*, (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)).

The Panel accepts the Complaint's undisputed allegations that Respondent has no relevant trademark rights and has no authorization or license to use Complainant's trademark in the disputed domain name. The Panel also accepts the Complaint's averment that Respondent is not commonly known by the disputed domain name.

Complainant has submitted credible evidence that the disputed domain name has at times routed users to a webpage that appears to imitate and takes content from Complainant's online banking website that can be

reached via <carterbankandtrust.com>. At other times, the disputed domain name has routed to an inactive webpage.

The Panel finds that respondent lacks rights or legitimate interests in the disputed domain name, since Respondent's use of the disputed domain name falsely suggested that Respondent is affiliated with Complainant, the trademark owner. [WIPO Overview 3.0](#), section 2.5 ("a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner").

In light of the evidence and allegations of the Complaint, the Panel finds that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and that Complainant establishes a *prima facie* case. Omitting to submit a response, Respondent has neither contested nor rebutted that *prima facie* case.

The Panel finds, therefore, that Respondent has no rights or legitimate interests in the disputed domain name and that the second element of the Policy is established.

C. Registered and Used in Bad Faith

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established.

Using a domain name to intentionally attract Internet users, for commercial gain, by creating a likelihood of confusion, may be evidence of bad faith. Policy, paragraph 4(b)(iv). See, e.g., *L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc.*, WIPO Case No. [D2005-0623](#).

The record shows that Respondent registered the disputed domain after Complainant had long perfected its trademark rights. The terms used to make up the disputed domain name and its use to direct Internet users to a website imitating Complainant's website make obvious that Respondent knew the nature of Complainant's business associated with its trademarks.

The Panel finds that Respondent deliberately attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with Complainant's marks. This is evidence of bad faith registration and bad faith use. E.g., *Pfizer Inc. v. jg a/k/a Josh Green*, WIPO Case No. [D2004-0784](#); *DaimlerChrysler Corporation and DaimlerChrysler Services North America LLC v. LaPorte Holdings, Inc.*, WIPO Case No. [D2005-0070](#).

Moreover, the Panel also finds that bad faith is established under Policy, paragraph 4(b)(ii). Based on the UDRP proceedings referenced above, Respondent has engaged in a pattern of abusive registrations of multiple domain names incorporating trademarks of others. [WIPO Overview 3.0](#), section 3.1.2.

Furthermore, Respondent's passive holding of the disputed domain name, Respondent's failure to submit a response to the Complaint, and the failure to provide accurate contact details as required by Respondent's agreement with the Registrar² are cumulative evidence of use in bad faith. [WIPO Overview 3.0](#), section 3.3; *Telstra Corporation. Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel holds therefore that Respondent registered and used the disputed domain name in bad faith, thus, establishing the third element under paragraph 4(a) of the Policy.

² Notification of the Complaint to Respondent by courier was not possible due to incomplete registrant address details provided by Respondent, however there is no indication that email notification was not completed.

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 name <cartertrustbank.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: February 6, 2023