

ADMINISTRATIVE PANEL DECISION

Great Lakes Transportation Holding, LLC d/b/a Metro Cars v. Tim Morgan,
LogoBench

Case No. D2023-0764

1. The Parties

Complainant is Great Lakes Transportation Holding, LLC d/b/a Metro Cars, United States of America (“United States”), represented by Dykema Gossett PLLC, United States.

Respondent is Tim Morgan, LogoBench, United States.

2. The Domain Name and Registrar

The disputed domain name <metrocars.info> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 21, 2023. On February 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 22, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (REDACTED FOR PRIVACY, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to Complainant on February 28, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 5, 2023.

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 Respondent of the Complaint, and the proceedings commenced on March 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 28, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on April 6, 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

The following facts appear from the Complaint (as amended) and its Annexes, which have not been contested by Respondent.

Complainant is a Michigan limited liability company that offers a wide variety of transportation services, including ground transportation, airport transport, bus, van, and chauffeur services under the trademark METRO CARS (the "METRO CARS Mark"). Complainant asserts that for over 30 years, Complainant has operated the largest fleet of vehicles, buses, and vans servicing the Detroit Metropolitan Airport (DTW), the largest international airport in Michigan, and other airports and regions of Southeast Michigan and surrounding areas.

Complainant has registered with the United States Patent and Trademark Office ("USPTO") trademark registrations for the METRO CARS Mark, including:

United States Registration No. 1,908,853, METRO CARS, registered on August 1, 1995, for "chauffeured car for hire" services in International Class 39 and claiming a first use date at least as early as March 28, 1991.

Complainant also registered its official domain name <metrocars.com> through which it operates a website at "www.metrocars.com" which features its METRO CARS Mark and related registered logo design displaying the "circle R" registration symbol (the "METRO CARS Logo"), and through which consumers may directly book a variety of transportation services (the "Official METRO CARS Mark Website"). Complainant's Official METRO CARS Mark Website also displays photos of its transportation fleet, with vehicles branded with Complainant's registered METRO CARS Logo.

The disputed domain name was registered on July 1, 2020, and when accessed by Complainant on February 8, 2023, resolved to a website offering airport and other transportation services under the service mark DETROIT CAR SERVICE.

5. Parties' Contentions

A. Complainant

The Complaint is based on "(A) Complainant's rights, (B) trademark registrations issued by the U.S. Patent and Trademark Office, and (C) Respondent's bad faith and other information". Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the

Rules, where a party does not comply with any provision of the Rules, the Panel shall “draw such inferences therefrom as it considers appropriate”.

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that the requirements for each of the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these elements in more detail below.

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. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.2.

A. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the METRO CARS Mark for its automobile association goods and services dating back to 1991, and its now incontestable registration above on the principal register for the METRO CARS Mark dating back to 1995. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting trademark registration documents in the name of Complainant and therefore, Complainant has demonstrated it has rights in the METRO CARS Mark. See, *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant’s rights in the METRO CARS Mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the Top-Level Domain (“TLD”) “.info”, which is functionally necessary for the domain name to be registered) is identical or confusingly similar to Complainant’s METRO CARS Mark. See *Research in Motion Limited v. Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#); see also *Fenix International Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Howard Jones*, WIPO Case No. [D2020-3444](#).

It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. [WIPO Overview 3.0](#), section 1.7. Prior UDRP panels have also held “in cases where a domain name incorporates the entirety of a trademark, or 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 for purposes of UDRP standing”. See *id.*; see also *Awesome Kids LLC and/or Awesome Kids L.L.C. v. Selavy Comm.*, WIPO Case No. [D2001-0210](#).

Respondent incorporates Complainant’s METRO CARS Mark in its entirety as the disputed domain name with no change in its appearance or pronunciation other than the omission of the space between the terms “metro” and “cars”.

In light of the above, the Panel finds the disputed domain name is identical to the METRO CARS Mark in which Complainant possesses rights and Complainant has thus satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, the complainant is required to make out a *prima facie* case that the respondent does not have rights to or legitimate interests in the disputed domain name, upon which the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the disputed domain name. If the respondent fails to come forward with such evidence, a complainant is deemed to have satisfied the second element.

[WIPO Overview 3.0](#), section 2.1. See also, *The American Automobile Association, Inc. v. aaaaautoinsurance.com Privacy--Protect.org, aaa-netaccess.com Privacy--Protect.org, aaanetacccess.com Privacy--Protect.org, Isaac Goldstein*, WIPO Case No. [D2011-2069](#). Respondent has not come forward to show any rights or legitimate interests in the disputed domain name under the Policy at paragraph 4(c).

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in the disputed domain name. First, it is clear from the record submitted that Respondent has no affiliation or connection with Complainant. Complainant asserts that Respondent has no affiliation or other business relationship with Respondent, and that Respondent has never received Complainant's consent, license, franchise, or any other form of authorization from Complainant to make use of the METRO CARS Mark in any manner, including the registration of a domain name, much less the registration of a domain name to access a website structured to directly compete in the same market for the same services as Complainant.

Complainant states that Respondent is a direct competitor of Complainant, has used different corporate identities to shield their activities, ownership, and use of the disputed domain name, which Complainant contends weighs in favor of a finding Respondents are engaged in illegitimate use of the disputed domain name to gain an unfair competitive advantage.

Complainant also argues that Respondent is not commonly known by the disputed domain name and evidence from the Whois record made available through the concerned Registrar reflected in the Amended Complaint, shows Respondent is comprised of an individual with the name "Tim Morgan" as the registrant and his associated registrant organization, "LogoBench", neither of which bear any resemblance to the disputed domain name. Since Respondent elected to submit no evidence in these proceedings, there is no evidence from Respondent to the contrary, *i.e.*, that Respondent has been commonly known by the disputed domain name. The Panel finds review of the Whois record combined with Complainant's decades of use of the METRO CARS Mark and the lack of evidence in the record to suggest otherwise, allows the Panel to conclude that Respondent is not commonly known by the METRO CARS Mark, the disputed domain name or any variation thereof pursuant to Policy paragraph 4(c)(ii). See *Six Continents Hotels, Inc. v. Trasporto di Networ and Pro Intel*, WIPO Case No. [D2004-0246](#) ("given the Complainant's established use of its [...] marks, it is unlikely that the Respondents are commonly known by any of these marks").

A respondent not being commonly known by the disputed domain name supports a finding of a lack of rights or legitimate interests. See *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#). Since there is no evidence here, including the Whois record for the disputed domain name, suggesting that Respondent is commonly known by the disputed domain name, Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of 4(c)(ii). See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#).

Thus, there is no evidence in this case to suggest that Respondent is commonly known by the disputed domain name, that it is licensed or otherwise authorized to use Complainant's trademark, or that it has acquired any trademark rights relevant thereto. As such, the Panel finds this sub-section of the Policy is of no help to Respondent, and the facts presented here support a lack of rights or legitimate interests in the disputed domain name. See, *Confédération nationale du crédit mutuel v. Yu Ke Rong*, WIPO Case No. [D2018-0948](#); *Expedia, Inc. v. Dot Liban, Hanna El Hinn*, WIPO Case No. [D2002-0433](#).

Complainant also contends that since Respondent's website accessed through the disputed domain name contains numerous instances of source code keywords using the terms "Metro Cars" identical to the METRO CARS Mark, Respondent has thereby engaged in illegitimate use of the disputed domain name to blatantly misappropriate and trade off on the goodwill created by Complainant in its registered METRO CARS Mark which cannot be considered a *bona fide* offering of goods or services. Prior UDRP panels have held that use of a disputed domain name in this manner does not represent a *bona fide* use of the disputed domain name. See *Realm Entertainment Limited v. Whois Agent, Domain Protection Services, Inc / Onur Oztas, Betin 73*, WIPO Case No. [D2017-1266](#).

The annex to the Complaint confirms Complainant's analysis of Respondent's website showing its source code riddled with Complainant's METRO CARS Marks as keywords. Combining these facts with the disputed domain name's confusing similarity to the METRO CARS Mark, it is reasonable for the Panel to conclude that Respondent has configured the disputed domain name well aware of Complainant's locally well-known METRO CARS Mark in the Detroit market where Respondent also competes for business, to create a false association with Complainant and redirect users to a website offering transportation services which compete with Complainant's and thereby disrupt Complainant's business. Use of a domain name for such illegitimate purposes is neither a *bona fide* offering of goods or services pursuant to paragraph 4(c)(i), nor a legitimate noncommercial or fair use pursuant to Policy paragraph 4(c)(iii). [WIPO Overview 3.0](#), section 2.13; see also, *Apple Computer, Inc. v. PrivacyProtect.org / PrivateRegistrations Aktien Gesellschaft*, WIPO Case No. [D2012-0879](#).

In light of the above, and with no Response or other submission in this case to rebut Complainant's assertions and evidence, the Panel finds that the facts of this case demonstrate that Respondent has no rights or legitimate interests in the disputed domain name. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#).

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do the Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant contends that Respondent registered the disputed domain name for the primary purpose of disrupting Complainant's business by causing consumer deception and confusion as to the source, sponsorship, affiliation or endorsement of Respondent's website, particularly where, as here, Respondent is using an identical domain name to lure consumers to Respondent's website for commercial gain. Complainant next contends that given Respondent copied Complainant's Mark in the disputed domain name, there can be no question Respondent was well-aware of Complainant at the time the disputed domain name was registered, and that such registration was therefore in bad faith.

Given the METRO CARS Mark is registered on the Principal Register and incontestable confirms the METRO CARS Mark is distinctive, it is well-known in Detroit where the competing services are provided, and the disputed domain name incorporates its identical term in its entirety, the Panel finds bad faith registration based on Respondent's likely knowledge and targeting of the METRO CARS Mark and Complainant's long-standing reputation in the market where the parties compete. See *The American Automobile Association Inc. v. Sompop Padungkijjaroen*, WIPO Case No. [D2012-2168](#).

Moreover, panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Complainant next contends, as discussed in in Section 6.B, Respondent's repeated usage of Complainant's METRO CARS Mark as a keyword in the Respondent's website source code, but not the visible portion of the page apart from the URL, shows Respondent's registration and use of the disputed domain name is in bad faith.

Prior UDRP panels have found similar use of a complainant's trademark in the source code of a respondent's competing website evidence of registration and use in bad faith. See, e.g., *We Buy Any Car*

Limited v. Roger Masih, WIPO Case No. [D2011-0907](#); *Tata Sons Limited. v. tataconnect*, WIPO Case No. [D2006-0572](#) (respondent's use of complainant's trademark in meta-tags found in the website source code evidenced registration and use in bad faith of disputed domain name).

Given the widespread recognition of Complainant's METRO CARS Mark, including in the United States, where Respondent is located, and especially the Detroit Airport vicinity where the Parties' competing services are provided, and decades of use of the METRO CARS Mark prior to Respondent's registration of the disputed domain name on July 1, 2020, the configuration of the disputed domain name in a manner which redirects consumers to Respondent's website, the ultimate effect of any use of the disputed domain name will be to cause confusion with Complainant or worse, subject unprotected consumers seeking its products or services to Respondent's deceptive scheme infringing Complainant's METRO CARS Mark. Considering the totality of circumstances here there can be no question that Respondent's use and registration of the disputed domain name must be considered to be in bad faith. See *Empresa Brasileira de Telecomunicações S.A Embratel v. Kevin McCarthy*, WIPO Case No. [D2000-0164](#).

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied 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 disputed domain name, <metrocars.info>, be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: April 24, 2023