

ADMINISTRATIVE PANEL DECISION

Great Lakes Transportation Holding, LLC d/b/a Metro Cars v. Zia Rafique Case No. D2022-4082

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 Zia Rafique, United States.

2. The Domain Name and Registrar

The disputed domain name <metrocarairport.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 28, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 2022, 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, and contact information in the Complaint. The Center sent an email communication to Complainant on October 31, 2022 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 November 4, 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 Respondent of the Complaint, and the proceedings commenced on November 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 27, 2022. The Center received email communications from the Registrar confirmed email address for Respondent and a representative on November 27, 28, and 29, 2022 to which the Center acknowledged receipt. Respondent did not submit any formal response. Accordingly, the Center informed the Parties of the Commencement of Panel Appointment on November 29, 2022.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on December 6, 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

Complainant provides transportation services in the vicinity of the Detroit airport in Michigan, United States. It is the proprietor of several trademark registrations for its marks, including the following:

- United States Registration No. 1908853 for METRO CARS (word mark), registered on August 1, 1995 for services in class 39;
- United States Registration No. 4009524 for METRO CARS (device mark), registered on August 9, 2011 for services in classes 35 and 39;
- United States Registration No. 4009672 for MC (device mark), registered on August 9, 2011 for services in classes 35 and 39.

Complainant operates its commercial website at the domain name <metrocars.com>.

The disputed domain name was registered on August 6, 2021. It resolves to a website offering limousine and car transportation services in the Detroit, Michigan area under the names “Metro Airport Car” and “DTW Metro Car”.

The record contains a copy of a cease-and-desist letter sent by Complainant to a party who is the owner of the disputed domain name, according to Complainant’s investigation, on October 5, 2022. The responses thereto, signed by a party different from Respondent’s name, state that they are a digital marketing agency based in Pakistan and have operated approximately 50 similar websites around the world. The website at the disputed domain name has been operated by this agency since 2019. According to them, they have absolute ownership rights in the disputed domain name and “Metro Car” is a generic keyword.

5. Parties’ Contentions

A. Complainant

Complainant’s contentions may be summarized as follows:

Under the first element, Complainant states that, for over 30 years, it has operated the largest fleet of vehicles, buses and vans servicing the Detroit Metropolitan Airport (“DTW”), the largest international airport in Michigan, United States, and other airports and regions of Southeast Michigan and surrounding areas. Its METRO CARS mark is clearly identifiable in the disputed domain name, and the addition of the descriptive term “airport” does not distinguish the disputed domain name from this mark.

Under the second element, Complainant states that Respondent is in no way affiliated with Complainant, has no license from Complainant to use its marks and is not commonly known by the disputed domain name. Respondent has copied the look and feel of Complainant’s website at the domain name <metrocars.com>, including using the METRO CARS mark and using photos of vehicles displaying Complainant’s logos from Complainant’s website.

Under the third element, Complainant states 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. Respondent has copied

Complainant's marks and logos and is using an almost identical domain name to lure consumers to its website for commercial gain. Given that Respondent copied Complainant's logos, there can be no doubt that Respondent was aware of Complainant. Both Parties operate in the Detroit area. Respondent concealed his identity by using a proxy service and uses various aliases to conceal his identity.

Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not formally reply to Complainant's contentions. The informal communications were sent from an email address as confirmed by the Registrar as Respondent's email address signed using a different name. The sender first informed the Center on November 27, 2022 that its representative was in contact with Complainant's representative in pursuit of a settlement, therefore they would like to request a 30-day extension. Complainant confirmed on the same day that they had been contacted by this sender's representative but they were not sure about the relationship between this sender and Respondent Zia Rafique. Complainant stated that it refused a 30-day extension because the Parties were not involved in settlement discussion.

On November 28, 2022, the Center requested the sender of communications on behalf of Respondent to clarify his or her relationship with Respondent Zia Rafique. In response to the Center's request, the sender indicated on the same day that they are the marketing agency authorized to operate the website at the disputed domain name on behalf of Respondent Zia Rafique and Respondent has given them the full right to communicate regarding this dispute. On November 29, 2022, the sender's representative indicated that it was not possible for the Parties to pursue settlement.

The Panel has reviewed the communications from the marketing agency asserting rights to act in this dispute on behalf of Respondent. The main arguments may be summarized as follows:

- the disputed domain name is different from the domain name used by Complainant, and trademark and logo owned by Complainant;
- Metro Car is a generic term and is used in any metropolitan city;
- Respondent operates many Google Ads for hundreds of companies; if they use any brand name in a "Google Ad Campaign", Google will suspend their account;
- Google has not objected to its use of "metro car" in Google Ads due to it being a generic term.

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

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

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

(iii) Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A. Identical or Confusingly Similar

Complainant has provided evidence establishing that it is the assignee of trademark rights in the METRO CARS mark through registrations in the United States. Complainant thereby satisfies the threshold

requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

In comparing Complainant's mark with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to this trademark as the trademark is clearly recognizable within the disputed domain name, save for the omission of the letter "s". This is clearly a deliberate misspelling of Complainant's trademark. See [WIPO Overview 3.0](#), section 1.9.

The disputed domain name additionally contains the word "airport", which does not prevent a finding of confusing similarity. UDRP panels have consistently held that, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

It is the well-established view of UDRP panels that a generic Top-Level Domain such as ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

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

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, respondent's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel finds that there is no evidence that Respondent is commonly known by the disputed domain name nor that it is using the METRO CARS mark with the permission of Complainant. The nature of the disputed domain name, which reflects a misspelling of Complainant's mark together with a descriptive term, carries a risk of Internet user confusion (that seemingly being Respondent's aim), and possibly even in the case of an unsuspecting user, of implied affiliation with Complainant as it may mistakenly be seen as effectively impersonating or suggesting some connection to Complainant, and accordingly cannot constitute a fair use in these circumstances. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases cited thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent has not submitted any relevant evidence or arguments demonstrating such rights or legitimate interests, nor has it formally rebutted any of Complainant's contentions.

Nevertheless, interpreting the available evidence in the light most favorable to Respondent, the Panel has considered whether the evidence might support a finding that Respondent is making a *bona fide* offering of goods and services and thus have a right or legitimate interest in the disputed domain name.

The Panel concludes that the circumstances of the case prevent the inference of rights or legitimate interests on the part of Respondent. In particular, the Panel finds that, by operating a website offering identical services and using photographs from Complainant's website displaying Complainant's METRO CARS and MC marks, Respondent is attempting to impersonate Complainant. Such use cannot support a finding of rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.5.2.

Contrary to the assertions made by parties purporting to act on behalf of Respondent, the Panel does not find that Respondent has rights or legitimate interests in the disputed domain name due to its being a dictionary word or phrase. Rather, the Panel finds that the disputed domain name is not being used based on its dictionary meaning, but in connection with the specific aim of misleading Internet users into believing that they are visiting a website affiliated with Complainant. See [WIPO Overview 3.0](#), section 2.10.

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

C. Registered and Used in Bad Faith

The Panel finds that Complainant has demonstrated the probability of Respondent's bad faith registration and use of the disputed domain name. Complainant's rights in its METRO CARS mark predate by decades the registration of the disputed domain name. The disputed domain name reflects Complainant's well-established mark in a misspelled form, together with the dictionary term "airport".

In this case, the record shows that Respondent deliberately targeted Complainant and its METRO CARS and MC marks by using vehicle photos from Complainant's website bearing these marks. The Panel finds the evidence in the record establishes that Respondent has used the disputed domain name to attract traffic to its website, without any disclaimer clarifying the lack of a relationship between Complainant and Respondent. The website features a near copy of Complainant's METRO CARS mark and displays vehicle photos copied from Complainant's website. The Panel finds that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant's mark. See [WIPO Overview 3.0](#), section 3.1.4.

Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name and the Panel does not find any such use plausible. For reasons already stated above, the Panel is not persuaded that Respondent has chosen this disputed domain name for its dictionary meaning. Instead, the evidence demonstrates that Respondent has targeted Complainant and its marks.

The Panel therefore finds that Complainant has established 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 name <metrocarairport.com> be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: December 20, 2022