

## **ADMINISTRATIVE PANEL DECISION**

The American Automobile Association, Inc. v. David Sander  
Case No. D2022-4533

### **1. The Parties**

Complainant is The American Automobile Association, Inc., United States of America (“United States”), represented by Covington & Burling LLP, United States.

Respondent is David Sander, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <aaateamcare.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 28, 2022. On November 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 29, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on November 30, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on November 30, 2022.

The Center verified that the Complaint together with the amendment to 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 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 3, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on January 9, 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 solely to add the registrar-provided registrant information) and its Annexes, which have not been contested by Respondent.

Since its founding over a century ago, Complainant, a Connecticut corporation with its principal place of business in Heathrow, Florida, has offered its automobile association services under its famous AAA trademarks (the “AAA Marks”) to currently more than 60 million motor vehicle owner and motorist members in the United States and Canada. Complainant’s services include in particular gas price-comparison services, arranging for discount purchases, and other automobile-related information and benefits.

Complainant has registered with the United States Patent and Trademark Office (“USPTO”) more than 100 trademarks incorporating the designation AAA in connection with its products and services, including marks that AAA has used since at least 1902 (collectively the “AAA Marks”), including:

- United States Registration No. 829,265, AAA, registered on May 23, 1967, for a range of automobile association services in International Classes 35, 36, 37, 39, 41 and 42 and claiming a first use date for “disseminating travel information and making travel arrangements” in International Class 39 of January 1, 1902; and
- United States Registration No. 2,656,959, AAA DOLLARS, registered on December 3, 2002, for “Magnetically encoded bank cards having a stored value, namely, prepaid purchase cards for purchasing goods from selected merchants” in International Class 9; and
- United States Registration No. 5,231,348, AAA DRIVERSNATION, registered on June 27, 2017, for “Providing a website featuring information relating to automobiles, namely, gas price comparison information and car reviews” in International Class 35.

Complainant has submitted with its Complaint a list of UDRP panel decisions finding that Complainant and its AAA Marks are valuable and famous in the United States and abroad.

The disputed domain name was registered on August 8, 2022, and initially redirected to a website purporting to offer users “\$500 Visa® Prepaid Cards For Gas”, but at the time of filing of the Complaint navigation to the website accessed through the disputed domain name generated an error message and no longer provided any content, and as of the date of this decision, it appears that the disputed domain name still resolves to an inactive website.

#### **5. Parties’ Contentions**

##### **A. Complainant**

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(e) 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 AAA Marks for its automobile association goods and services dating back historically to 1902, and its registrations above for the AAA Mark dating back to 1967. 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 AAA Marks. See, *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant's rights in the AAA 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") ".com", which is functionally necessary for the domain name to be registered) is identical or confusingly similar to Complainant's AAA Mark. See *Research in Motion Limited v. thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#).

Prior UDRP panels have held the fact that a domain name which wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other terms to such marks, "whether descriptive, geographical, pejorative, meaningless, or otherwise". [WIPO Overview 3.0](#), section 1.8; see also, *General Electric Company v. Recruiters*, WIPO Case No. [D2007-0584](#).

Complainant has been down this road before. Prior UDRP panels have held in other cases involving Complainant that a domain name is confusingly similar to a trademark when the domain name includes the entire mark, even if one or more terms are added. See, e.g., *The American Automobile Association, Inc. v. Spins Unlimited, David Snyder*, WIPO Case No. [D2013-1827](#); *The American Automobile Association, Inc. v. Top Business Names*, WIPO Case No. [D2012-2295](#).

Respondent incorporates Complainant's AAA Mark in its entirety as the initial term in the disputed domain name with no change in its appearance or pronunciation. The mark would clearly be recognizable by consumers, and the terms appended that follow, "team" and "care", do not prevent a finding of confusing similarity under the Policy.

Based on the above, this Panel finds that these additions do not prevent a finding of confusing similarity between the disputed domain name and Complainant's well-known AAA Marks, which is incorporated in its entirety into the disputed domain name. Accordingly, the Panel finds the disputed domain name confusingly similar to the AAA Marks in which Complainant has rights and Complainant has 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 has 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. The American Automobile Association, Inc. v. aaaaautoinsurance.com Privacy--Protect.org*, *aaa-netaccess.com Privacy--Protect.org*, *aaanetacceess.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 Complainant 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 AAA Marks in any manner, including the registration of a domain name (much less the registration of a domain name to access a website structured to possibly engage in an illegitimate prepaid gas card distribution scheme aimed at Complainant's customers or prospective customers).

Complainant also shows that Respondent is not commonly known by the disputed domain name because Complainant has submitted evidence showing Respondent's name "david sander" as the registrant in the Whois record made available through the concerned Registrar, which name bears no 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 AAA Marks and the lack of evidence in the record to suggest otherwise, allows the Panel to conclude that Respondent is not commonly known by the AAA Marks, 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 the disputed domain name now resolves to an inactive or “blank” web page, which reports an error, that Respondent is not doing business as “aaa”, or any similar variation thereof and has not used the “aaa” name or mark (or any similar name) in connection with the *bona fide* offering of goods or services. Prior UDRP panels have held that use of a disputed domain name to resolve to a blank or inactive web page does not represent a *bona fide* use of the disputed domain name.

Here, the annex to the Complaint shows that Complainant’s initial attempts to access a website using the disputed domain name redirected to a website purporting to offer users “\$500 Visa® Prepaid Cards For Gas”. Combining these facts with the disputed domain name’s confusing similarity to the AAA Mark, it is reasonable for the Panel to conclude that Respondent has prepared the disputed domain name to engage in a fraudulent gas card distribution scheme, or well aware of Complainant’s famous AAA Mark, to register and use of the disputed domain name to create a false association with Complainant to redirect users to a website offering prepaid Visa gas cards that, if legitimate, compete with AAA’s fuel-related services and benefits and would be disruptive of 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 and has shown in the annexes to its Complaint that Complainant and its AAA Marks are well known throughout the world and has an undisputable reputation in the automobile association member and travel services industry. Many UDRP panels have previously acknowledged Complainant’s reputation and the AAA Mark to be well-known or famous worldwide, making it unlikely that Respondent was not aware of Complainant’s rights. See, e.g., *The American Automobile Association, Inc. v. Spins Unlimited, David Snyder, supra*.

Complainant further contends that there is no other explanation to register the disputed domain name other than to target Complainant. Given its AAA Mark is well-known worldwide, and the disputed domain name incorporates its identical term in its entirety, the Panel finds bad faith registration based on Respondent’s likely knowledge of the AAA Mark given its widespread recognition, including the United States where Respondent is located. See *The American Automobile Association Inc. v. Sompop Padungkijaroen*, 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.

Given the widespread recognition of Complainant's AAA Mark, including the United States, where Respondent is located, and decades of use of the AAA Mark prior to Respondent's registration of the disputed domain name on August 8, 2022, 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 such illegitimate card distribution schemes and tarnish Complainant's AAA Mark. Respondent's use and registration of the disputed domain name, therefore, 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. Considering all the circumstances, the Panel concludes that 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 <aaateamcare.com> be transferred to Complainant.

*/Scott R. Austin/*

**Scott R. Austin**

Sole Panelist

Date: January 28, 2023