

ADMINISTRATIVE PANEL DECISION

Carry-On Trailer, Inc. v. belkass Ajemaa, ecoussef
Case No. D2022-2170

1. The Parties

Complainant is Carry-On Trailer, Inc., United States of America (“United States” or “U.S.”), represented by Hovey Williams LLP, United States.

Respondent is belkass Ajemaa, ecoussef, United States.

2. The Domain Name and Registrar

The disputed domain name <carry-ontrailer.shop> (“Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2022. On June 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 15, 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 Complainant on June 16, 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 June 21, 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 June 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 19, 2022.

The Center appointed John C. McElwaine as the sole panelist in this matter on July 26, 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 is a corporation formed under the law of the Commonwealth of Virginia, U.S. Complainant is affiliated with American Trailer World Corporation (ATW), a Delaware corporation, which provides business management consulting services to manufacturers and distributors of trailers and related parts and components for trailers. Complainant is the owner of the following trademarks registered with the United States Patent and Trademark Office that are relevant to this proceeding:

- CARRY-ON TRAILER CORPORATION (and Design), U.S. Reg. No. 2,947,391, registered on May 10, 2005 in International Classes, 6, 9 and 12;
- CARRY-ON TRAILER CORPORATION (and Design), U.S. Reg. No. 2,986,859, registered on August 23, 2005 in International Classes 6, 9 and 12;
- CARRY-ON TRAILER CARGO (and Design), U.S. Reg. No. 3,150,593 registered on October 3, 2006 in International Class 12; and
- CARRY-ON TRAILER CARGO (and Design), U.S. Reg. No. 3,167,545 registered on November 7, 2006 in International Class 12.

Collectively these trademark registrations are referred to as the “CARRY-ON Registrations”.

The Domain Name was registered by Respondent on March 28, 2022. At the time of the filing of the Complaint, the Domain Name resolved to a website purporting to be the website of Complainant.

5. Parties' Contentions

A. Complainant

Complainant alleges that since at least as early as 1996, it has advertised, sold, and distributed their famous Carry-On trailers and accessory parts to consumers throughout the United States and Canada. To protect its marks, Complainant owns the CARRY-ON Registrations, which are incontestable, as well as registrations and/or pending applications in Canada, for CARRY-ON TRAILER CORPORATION and Design, and CARRY-ON TRAILER CARGO and Design. Complainant asserts that its first use of the CARRY-ON trademark dates back over 25 years, and that Complainant has continuously used the CARRY-ON trademark in connection with trailers and accessory parts for trailers, and actively licenses the CARRY-ON trademark to a select group of authorized dealers and/or retailers who may market and distribute the Carry-On products in the United States and Canada. Collectively, these common law trademark rights and the CARRY-ON Registrations are referred to as the “CARRY-ON Marks”. Complainant further asserts that Carry-On trailers and accessory parts are sold, among other authorized online and brick-and-mortar marketplaces, at “www.carry-ontrailer.com”, which is a website operated by Complainant.

With respect to the first element of the Policy, Complainant points out that the Domain Name contains Complainant's CARRY-ON Marks dropping only the terms “corporation” or “cargo.” Complainant asserts that the applicable Top-Level Domain is viewed as a standard registration requirement and should be disregarded under the first element confusing similarity test.

With respect to the second element of the Policy, Complainant contends that Respondent is neither an authorized distributor nor licensee of Complainant, and has not otherwise obtained authorization to use Complainant's CARRY-ON Marks. Complainant also asserts that it is not aware that Respondent, as an individual, business, or other organization, has been commonly known by the Domain Name.

In addition, Complainant contends there is no evidence indicating that before any notice to Respondent of this dispute, Respondent used or prepared to use the Domain Name in connection with a *bona fide* offering of goods or services under the CARRY-ON Marks. Instead, Complainant alleges that Respondent is using the Domain Name in connection with a website that creates a misleading impression of association with Complainant, which does not give rise to any rights or legitimate interests in the Domain Name. Complainant further alleges that it has received customer complaints evidencing actual consumer confusion related to Respondent's unauthorized use of the CARRY-ON Marks in the Domain Name and in connection with the website that resolves at this Domain Name. Complainant also asserts that Respondent is not making a legitimate noncommercial or fair use of the Domain Name.

With respect to the third element of the Policy, Complainant contends Respondent registered the Domain Name more than two decades after Complainant's adoption of its CARRY-ON Marks. Complainant further asserts the Domain Name copies the entirety of the CARRY-ON Marks and directs users to Respondent's fraudulent website, which further displays and palms off the goodwill of the CARRY-ON Marks and Complainant's reputation and goodwill to defraud the Complainant's unsuspecting customers. Complainant asserts that bad faith registration and use of the Domain Name is established because Respondent is intentionally attempting to traffic Internet users through Respondent's website, for commercial gain, by fraudulently holding itself out to be Complainant, or a licensee or authorized distributor of Complainant's CARRY-ON Marks.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel's findings on each of the above cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant show that the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2. On this point, Complainant has provided evidence that it is the owner of the CARRY-ON Registrations.

The Domain Name in this matter is wholly encompassed in Complainant’s CARRY-ON TRAILER CORPORATION and CARRY-ON TRAILER CARGO trademarks. The fact that the Domain Name does not include the terms, “corporation” or “cargo”, does not prevent a finding of confusing similarity under the first element. Accordingly, the Panel finds that the Domain Name is confusingly similar to Complainant’s CARRY-ON Registrations in which Complainant has valid trademark rights. Therefore, Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant need only make a *prima facie* showing on this element, at which point the burden shifts to Respondent to present evidence that it has some rights or legitimate interests in the Domain Name. If Respondent has failed to do so, Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

Complainant asserts that Respondent is not authorized to have registered the Domain Name and then set up a website that attempts to palm off Complainant’s well-known CARRY-ON Marks to confuse or defraud consumers. Although properly notified by the Center, Respondent failed to submit any response on these points. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the disputed domain name. See *AREVA v. St. James Robyn*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#).

Nevertheless, under paragraph 4(c) of the Policy, a respondent’s rights or legitimate interests to a domain name may be established by demonstrating any of the following three conditions: (i) before any notice to respondent 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if respondent 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 Respondent will not be able to show rights or legitimate interests under any of the three conditions.

As an initial matter, Respondent cannot satisfy paragraph 4(c)(ii) of the Policy. There is no evidence in the record that Respondent is commonly known by the name “Carry-On Trailer”. In fact, to the contrary, the Whois information indicates that Respondent’s name is purportedly “belkass Ajemaa, ecoussef.”

Complainant also asserts that the Domain Name resolved to a website that is a virtually identical copy of Complainant's website. In addition, Complaint asserts that the Domain Name, and the website that was copied, may be used for fraudulent purposes by praying on unsuspecting Internet visitors trusting the Domain Names or the website due to their use of the CARRY-ON Marks. On this point, Complainant submitted evidence of one consumer complaint about Respondent's website showing actual confusion. Respondent has not submitted any response to rebut or explain these allegations.

The Panel finds that the use of the Domain Name to divert Internet traffic or to confuse and deceive the Internet users is not a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy. Prior UDRP panels deciding this issue have held that such use of a domain name cannot be a "*bona fide* offering of goods or services" and is not "fair use of the domain name." See *Microsoft Corporation v. Microsoft.com aka Tarek Ahmed*, WIPO Case No. [D2000-0548](#) ("by using a domain name and establishing a website deliberately designed to confuse Internet users and consumers regarding the identity of the seller of the goods and services, Respondent has not undertaken a *bona fide* or good faith offering of the goods and services."). Without a response from Respondent justifying its use of the Domain Name as authorized by Complainant or as fair use, the Panel cannot find Respondent has a legitimate interest.

In sum, Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interests and Respondent has failed to come forward to rebut that showing. As provided for by paragraph 14 of the Rules, the Panel may draw such inference from Respondent's default as it considers appropriate. For all these reasons, the Panel is entitled to accept that the second element of the Policy is established by Complainant, and Respondent has no rights or legitimate interests in the Domain Name, pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can be found where a respondent "knew or should have known" of a complainant's trademark rights and nevertheless registered a domain name in which it had no right or legitimate interest. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). As detailed above, Respondent registered the Domain Names, which are identical to the well-known CARRY-ON Marks. There is no explanation for Respondent to have chosen to register the Domain Name other than to intentionally trade off the goodwill and reputation of Complainant's trademarks or otherwise create a false association with Complainant. In fact, the website that resolves from the Domain Name and which displays a copy of Complainant's CARRY-ON TRAILER CORPORATION (and Design) trademark and copying images and text from Complainant's website aptly shows Respondent must have had knowledge of Complainant when the Domain Name were registered. With no response from Respondent, such a claim of bad faith registration is undisputed.

Also as discussed herein, Respondent registered the Domain Name and linked it to a website intended to confuse consumers into thinking they were visiting Complainant's website. Moreover, actual customer confusion was demonstrated. This amounts to bad faith use because Respondent is using the Domain Name to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with the CARRY-ON Marks as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. *Philip Morris USA Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Raph Lionnel Noundjeu*, WIPO Case No. [D2020-0556](#) (finding that given that the disputed domain name incorporates the complainant's trademark (and a third-party's trademark) and the website operated under the disputed domain name displays complainant's trademarks, logo and images that respondent intended to attract Internet users accessing the website corresponding to the disputed domain name <marlboro-newport.com> who may be confused and believe that it is a website held, controlled by, or somehow related to or endorsed by the complainant, for its commercial gain). Thus, the Panel holds that Complainant has met its burden of providing sufficient evidence that Respondent registered and is using the Domain Name in bad faith under paragraph 4(b)(iv) of the Policy.

For these reasons, the Panel holds that Complainant has met its burden of showing that Respondent registered and is using the Domain Name in bad faith under 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 <carry-ontrailer.shop> be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: August 9, 2022