

ADMINISTRATIVE PANEL DECISION

Mastercard Prepaid Management Services Limited v. lee aqing
Case No. D2022-4363

1. The Parties

The Complainant is Mastercard Prepaid Management Services Limited, United Kingdom, represented by Dechert, United Kingdom.

The Respondent is lee aqing, China.

2. The Domain Names and Registrar

The disputed domain names <passportcash.net> and <passportcash.org> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 18, 2022, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on November 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 16, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on December 22, 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

The Complainant is part of the MasterCard group of companies and focuses its business activities on the management and delivery of consumers and corporate prepaid travel cards to business partners around the world, including financial institutions, retailers, travel agents and foreign exchange bureaux.

The Complainant offers a variety of prepaid travel cards including the Cash Passport range of prepaid cards, which are sold in countries across Europe, North and South America, the Middle East, Africa, Asia, and Oceania.

The Complainant formally acquired the Cash Passport business from Travelex in 2010, however the Cash Passport business has been operated by the Complainant and its predecessors in title since mid-2000s.

The Complainant among others owns the following trademark registrations for the word mark CASH PASSPORT:

- International Trademark Registration ("IR") No. 949165, registered since October 15, 2007, in more than 20 jurisdictions for goods and services of classes 9, 16, 35 and 36 the Nice Agreement Concerning the International Classification of Good and Services for the Purpose of the Registration of Marks ("Nice Classification"), and

- European Union Trademark Registration ("EUTM") No. 0949165, registered since October 14, 2010, for goods and services of classes 9, 16, 35 and 36 of the Nice Classification.

The Complainant operates its website at "www.cashpassport.com". The corresponding domain name <cashpassport.com> was registered since April 12, 2002.

The disputed domain names were registered on December 14, 2015, and appear to have not resolved to any website until May 2022 when the Complainant became aware that the disputed domain names redirect to a Complainant's direct competitor's website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to its CASH PASSPORT trademark, since the trademark is clearly recognizable in the disputed domain names with the only difference being the switching of the order of the two words "cash" and "passport".

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain names, and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii) or (iii) of the Policy.

The Complainant claims that the Respondent's use of the disputed domain names to redirect Internet users to a competing website, presumably for commercial gain, is indicator of bad faith.

The Complainant also alleges that it is reasonable to infer that the Respondent had at least constructive, if not actual knowledge of the Complainant's prior rights in the CASH PASSPORT trademark when registered the disputed domain names, which is further indicative of bad faith.

The Complainant requests that the disputed domain names <passportcash.net> and <passportcash.org> be transferred from the Respondent to the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

It has been a consensus view in UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

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

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain names are identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a nationally or regionally registered trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the CASH PASSPORT trademark, and for the purpose of this proceeding, the Panel establishes that the IR No. 949165 and EUTM No. 0949165 satisfy the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assessed whether the disputed domain names are identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the [WIPO Overview 3.0](#), the standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (in this case ".net" and ".org") is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The Complainant's trademark is comprised of the word elements "cash" and "passport". The disputed domain names share these exact two words as well, though in reverse order.

The Panel's view is that despite the Respondent reversing the order of words forming the Complainant's trademark it remains clearly recognizable in the disputed domain names. Incorporating a complainant's trademark in reversed order in a domain name does not prevent a finding of confusing similarity (see *Nokian Tyres plc v. Yansheng Zhang, gname.com Pte. Ltd.*, WIPO Case No. [D2020-3032](#) and *Arcelormittal (SA) v. Saeed Ahmadi*, WIPO Case No. [D2021-2225](#)).

The Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark and that requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent.

As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with the relevant evidence demonstrating rights or legitimate interests in the domain names. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds well-established rights in the CASH PASSPORT trademark.

The Complainant has never authorized the Respondent to use its trademark in any way, and its prior rights in the trademark precede the date of registration of the disputed domain names.

The Respondent defaulted and failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant's *prima facie* case.

The Respondent is using the disputed domain names to redirect Internet users to a Complainant's direct competitor's website, which promote goods and services identical to or highly similar with the goods and services of the Complainant. Use of the disputed domain names to divert traffic, presumably intended for the Complainant cannot be deemed legitimate for the purpose of the Policy.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names in accordance with paragraph 4(a)(ii) of the Policy

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

As shown by the Complainant, the Respondent has been using the disputed domain names to deceive Internet users presumably looking for the Complainant by redirecting them to a Complainant's direct competitor's website that is either commercially motivated (bad faith under paragraph 4(b)(iv) of the Policy) or "for the purpose of disrupting the business of a competitor" (bad faith under paragraph 4(b)(iii) of the Policy) and in view of the Panel this is clear evidence of bad faith use of the disputed domain names.

However, in order to succeed under the Policy, the Complainant must also prove bad faith at the time of registration of the disputed domain names in 2015, seven years ago.

This Panel accepts the Complainant's submissions that the Respondent was most probably aware of the Complainant's Cash Passport business and reputation when the Respondent registered the disputed domain names and considers the following facts and circumstances supporting an inference of bad faith registration of the disputed domain names.

The Complainant's predecessor in title and the Complainant have extensively used the CASH PASSPORT trademark for over ten years before the Respondent registered the disputed domain names confusingly similar to the Complainant's trademark. Due to such substantial use of the CASH PASSPORT trademark before the Respondent's acquisition of the disputed domain names, the CASH PASSPORT trademark could have been considered if not trademark-famous then at least well known in the financial sector, and in particular in the business of prepaid travel cards, which more likely than not suggest the Respondent's knowledge and targeting of the Complainant's trademark.

As discussed above, the Respondent's lacks any rights or legitimate interests in the disputed domain names, and the only use of the disputed domain names actively made by the Respondent clearly falls within definition of cybersquatting and the applicability of paragraphs 4(b)(iii) and 4(b)(iv) of the Policy.

The Respondent's failed to respond to the cease-and-desist letter sent by the Complainant and to file a response in this matter, which in view of the Panel also underscores the likelihood of the Respondent's bad faith at the time of registration of the disputed domain names.

Accordingly, the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied.

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 names <passportcash.net> and <passportcash.org> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: January 5, 2023