

ADMINISTRATIVE PANEL DECISION

Magna International Inc. v. Braden Charles
Case No. D2023-1019

1. The Parties

The Complainant is Magna International Inc., Canada, represented by Gowling WLG (Canada) LLP, Canada.

The Respondent is Braden Charles, United States of America (“United States”).

2. The Domain Name and Registrar

The Disputed Domain Name <magnaecar.com> (the “Disputed Domain Name”) is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 9, 2023, 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 March 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 6, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on May 3, 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 Complainant is a global automotive supplier with 345 manufacturing facilities in 28 countries and over 170,000 employees worldwide. The Complainant had global sales in 2021 of over USD 36.2 billion. Part of its business involves the development of products and technology related to electric vehicles which are commonly referred to as e-cars

The Complainant is the owner of a portfolio of trademark registrations that consist of or comprise or include the term "MAGNA", including registrations for MAGNA E-CAR. The latter are referred to as the "MAGNA E-CAR trademarks" in this decision – see for example European Union trademark no. 007603764 registered on September 6, 2009.

The Complainant is also the registrant of the domain name <magna.com> which resolves to its principal website.

The Disputed Domain Name was first registered on September 24, 2009. That was effected by an employee of the Complainant and with the Complainant's consent. It was then used by the Complainant to resolve to a website with details about the Complainant's electric car business (the "Complainant's e-car Website"). In around 2015 it appears that the Disputed Domain Name passed into the hands of a third party without the Complainant's consent. Exactly how this occurred is obscure but it does not matter. The Respondent became the registrant of the Disputed Domain Name on or about April 26, 2021

The Disputed Domain Name currently resolves to a website purporting to be that of the Complainant's business (the "Respondent's Website"). The Respondent's Website however also contains a sentence which reads as follows "Our specialists are always here to consult you. Our customers can get in touch with us to obtain information about available solutions for maintenance or financing auto repairs. We can help you to choose the right solutions, funding trough *[sic]* private loans or credit card loans". That paragraph contains an embedded hyperlink to a different website of a "payday loans" business at "www.1firstcashadvance.org" (the "Loans Website").

5. Parties' Contentions

A. Complainant

The Complainant contends as follows.

The Respondent acquired the Disputed Domain Name in or around April 2021.

The Disputed Domain Name is confusingly similar to the MAGNA E-CAR trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and simply omits the space and the hyphen.

The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent is not known by the Disputed Domain Name and has not been authorized by the Complainant to use the MAGNA E-CAR trademark.

The Respondent uses the Disputed Domain Name to resolve to a website which purports to be that of the Complainant's business. The Respondent's Website features the Complainant's trademarks. Such use shows that the Disputed Domain Name was registered for the purpose of disrupting the business of the Complainant and is being used in bad faith to deceive Internet users.

The precise relationship between the Respondent and the Loans Website is not known to the Complainant. However, it is clear that the Disputed Domain Name and the Respondent's Website are being used to funnel

and redirect Internet traffic intended for the Complainant to the Loans Website from which the Respondent appears to profit. This is evidence of registration and use in bad faith

B. Respondent

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

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favour of the Complainant, the Panel may draw appropriate inferences from the Respondent's default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

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

A. Identical or Confusingly Similar

The Complainant has rights in the MAGNA E-CAR trademark. The Panel finds the Disputed Domain Name is confusingly similar to this trademark (with the only difference being the lack of a hyphen within the Disputed Domain Name, noting that spaces cannot be reproduced in a domain name). Previous UDRP panels have consistently held that, if a trademark is recognizable, domain names are confusingly similar to such trademark for purposes of the Policy despite the lack of punctuation marks "[it] is well established that use or absence of punctuation marks, such as hyphens, does not alter the fact that a trademark is recognizable within the disputed domain name." (*La Roche-Posay Laboratoire Pharmaceutique v. Derek Broman*, WIPO Case No. [DME2022-0022](#), referring to *Six Continents Hotels, Inc. v. Helen Siew*, WIPO Case No. [D2004-0656](#))).

It is also well established that the generic Top-Level Domain ("gTLD"), in this case ".com", does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the 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.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use MAGNA E-CAR trademark. The Complainant has prior rights in the MAGNA E-CAR trademark which precede the Respondent's acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances the fact that the Disputed Domain Name was linked to the Respondent's Website which purports to be the Complainant's website leads the Panel to conclude the registration and use were in bad faith. The deliberate impersonation is very clear – for example the text on the landing page of the Respondent's Website commences as follows:

"On August 9, 2012, it was announced that Magna International reached an agreement to purchase the remaining interest in Magna E-Car Systems, regaining full ownership and control of the group. Magna maintains a leadership position in the supply of hybrid and electric vehicle (H/EV) components, systems and engineering services to the automotive industry. These competencies are found within our Powertrain and Magna Steyr groups.

At Magna, we understand how precious the time of our customers is. Therefore, our goal is to deliver one-stop solutions to our consumers and help them keep up with our society's rhythm. As a global supplier of advanced technology, we know exactly what your vehicle needs. Our innovative ideas and expertise come from a complete perception of the auto, offering complex car repair or assembly solutions."

The Panel concludes that the Respondent chose to register a domain name confusingly similar to the Complainant's MAGNA E-CAR trademark in order to facilitate a scheme where the Respondent's website impersonated that of the Complainant.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (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 web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the present circumstances the Respondent's motives are somewhat unclear. It seems unlikely to the Panel that attracting by deception customers who are then diverted to the Loan Website will be a significant factor. Persons who are attracted to the Respondent's Website because of its supposed connection with the Complainant are not obviously likely to be interested in the contents of the Loan Website which is reached via a relatively obscure hyperlink contained in some text on the Respondent's Website. If the Respondent's intention in impersonating the Complainant and then including embedded links to a third party site was some form of search engine optimization strategy that amounts to registration and use in bad faith – see *Crystal Cathedral Ministries v. Martina Zammit*, WIPO Case No. [D2023-0219](#). It may be the Respondent considered the Disputed Domain Name had value simply because it had previously been controlled by the Complainant - it appears that the Respondent is likely aware that this was the case as the Complainant's evidence is that the content of the Respondent's Website bears a number of similarities to the Complainant's e-car Website. In any case the Respondent's precise motive does not matter. The Respondent must have chosen to obtain the Disputed Domain Name because of its connection with the Complainant and the list in paragraph 4(b) of the Policy is non exhaustive. The Panel cannot conceive of any good faith use the Respondent could have for the Disputed Domain Name. The Panel also notes that the Respondent has not filed a Response and hence has not availed himself of the opportunity to present any case of good faith that he might have. The Panel infers that none exists.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <magnaecar.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: May 17, 2023