

## **ADMINISTRATIVE PANEL DECISION**

**Averitt Express, Inc v. Averitt Container**  
**Case No. D2024-3417**

### **1. The Parties**

The Complainant is Averitt Express, Inc, United States of America (“United States”), represented by Adams and Reese LLP, United States.

The Respondent is Averitt Container, United States.

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

The disputed domain name <averittcontainer.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 August 21, 2024. On August 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 21, 2024, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on August 22, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 24, 2024.

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 the Respondent of the Complaint, and the proceedings commenced on September 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 23, 2024.

The Center appointed Scott R. Austin as the sole panelist in this matter on September 30, 2024. 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**

Without contest by Respondent, Complainant asserts in its Complaint as amended, and its Annexes attached provide evidence sufficient to support that:

Complainant is a leading provider of freight transportation and supply chain management services in the United States which has through its predecessors provided transportation services (including transport via shipping container) since at least as early as 1971 under the trademarks AVERITT and AVERITT EXPRESS (collectively, the “AVERITT Marks”). Complainant operates over one hundred locations in the United States and provides freight and other transportation services to over three hundred international destinations in one hundred countries. Complainant asserts through such longstanding use, promotion, and advertising worldwide, the AVERITT Marks have become well known and recognized internationally.

Complainant holds trademark registrations for the AVERITT Marks in the U.S. and around the world used in connection with Complainant’s freight transportation and supply chain management services, including:

1. United States Registration No. 2616865, AVERITT EXPRESS, registered on September 10, 2002, for a range of transportation services involving freight and cargo pickup and delivery via truck in International Class 39 and claiming a first use date of October 1971.
2. United States. Registration No. 2619908, AVERITT, registered on September 17, 2002, for inter alia, a range of transportation and storage services involving freight and cargo pickup and delivery in International Classes 37, 39, and 41 and claiming a first use date of February 1997.
3. China Registration No. 25252236, AVERITT, registered on July 7, 2018, for inter alia, a range of transport and storage services involving freight and cargo pickup and delivery in International Class 39.
4. Mexico Registration No. 606616, AVERITT EXPRESS, registered on April 22, 1999, for inter alia, a range of transport and storage services involving freight and cargo pickup and delivery in International Class 39.

Complainant has also registered numerous domain names that incorporate the AVERITT Marks, including <averitt.com>, used to access the official AVERITT website (the “Official AVERITT Mark Website”) where it promotes Complainant’s various transportation and supply chain management services, including storage, tracking, and delivery of freight, packages, and cargo, and transportation logistics management and consulting services in connection with the AVERITT Marks, as well as owning <averittpress.com>, <goAveritt.com>, and others.

The disputed domain name was created on August 12, 2024, and as of that day through the date of the filing of the Complaint, August 21, 2024, resolved to a website displaying Complainant’s official logo and offering shipping containers for sale and rental in competition with Complainant, as well as providing a “Contact” link on the website directing users to a form for entering sensitive personal information in order to “GET A QUICK QUOTE.” As part of its copycat scheme to impersonate Complainant, the website lists Complainant’s corporate office addresses and has an active Email Exchange (“MX”) record, enabling Respondent may to use the disputed domain name to send emails for possibly for phishing purposes or additional bad faith uses more specifically set forth in Section 6 below.

#### **5. Parties’ Contentions**

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Complainant contends that the disputed domain name is identical or confusingly similar to Complainant’s trademark. Complainant contends it has well established registered and

incontestable trademark rights in the AVERITT Marks and the disputed domain name is confusingly similar because it incorporates the AVERITT Mark in its entirety. The addition of the term “container” in the disputed domain name does not prevent confusing similarity with Complainant’s AVERITT Mark under the Policy.

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name because Respondent has no commercial relationship with Complainant or license to use the disputed domain name or Mark, is not commonly known by the disputed domain name or the AVERITT Marks, and Respondent currently uses the disputed domain name to redirect users to a copycat website used it for illegitimate purposes to impersonate Complainant and/or redirect users to Respondent’s website for Respondent’s commercial gain that includes a form purportedly used for an illegal scheme to phish confidential personal and financial information under the guise of requesting a quote for Complainant’s services.

Finally, Complainant contends that the disputed domain name was registered and is being used in bad faith based on the unauthorized use of Complainant’s internationally well-known AVERITT Marks in the disputed domain name in order to attract Internet users to Respondent’s website by creating a likelihood of confusion with Complainant and its AVERITT Marks as to the source, sponsorship, affiliation, or endorsement of Respondent’s website. Further, Respondent has added “container” to amplify this false association, and to fraudulently imply that Respondent and its disputed domain name is affiliated with Complainant. Combining Respondent’s configuration of its disputed domain name in using the AVERITT Marks in its entirety to imply affiliation with Complainant to pursue the illegitimate purposes for which the disputed domain name has been used as listed in Section 6 below is sufficient to show bad faith registration and use under the Policy.

## **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## **6. Discussion and Findings**

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, 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.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. the disputed domain name has been registered and is being used in bad faith.

The Panel will deal with each of these requirements in turn.

## A. Identical or Confusingly Similar

To prove this element, Complainant must first establish that there is a trademark or service mark in which it has rights. 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. It is evident that Complainant possesses substantial and internationally recognized rights to the AVERITT Marks. Complainant has been utilizing the AVERITT Marks since 1971, promoting a broad spectrum of freight transportation and storage services, including transport via boat using containers for its services. The AVERITT Marks, in continuous use for decades, are protected by United States federal registration and various international registrations, thereby solidifying Complainant's exclusive rights. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting international trademark registration documents in the name of Complainant and therefore, Complainant has demonstrated it has rights in the AVERITT 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 AVERITT Marks established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's AVERITT Marks. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7.

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 words to such marks. [WIPO Overview 3.0](#), section 1.8 ("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 also, *BNP Paribas v. Ronan Laster*, WIPO Case No. [D2017-2167](#); *Trip.com, Inc. v. Daniel Deamone*, WIPO Case No. [D2001-1066](#).

The disputed domain name incorporates Complainant's AVERITT Mark in its entirety and adds the term "container". Respondent's addition to Complainant's Mark of this term to form the disputed domain name would not prevent a finding of confusing similarity as noted in the UDRP precedents cited above. Complainant also contends Respondent's selection of this term is to amplify the likelihood of confusion among consumers, particularly given Complainant's freight and cargo transport services, and that the Panel's independent review of the Official AVERITT Mark Website shows videos of cargo containers used in its transportation services, but this is an issue more appropriately considered under the second and third elements of the Policy. The addition of the generic Top-Level Domain ("gTLD") ".com" is irrelevant in determining whether the disputed domain name is confusingly similar. See, *Research In Motion Limited v. Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#); [WIPO Overview 3.0](#), section 1.11.1.

Based on the above, the Panel finds that the added term "container" does not prevent a finding of confusing similarity between the disputed domain name and Complainant's AVERITT Marks. Complainant's well-known AVERITT Mark remains fully recognizable as incorporated in its entirety into the disputed domain name. The similarity in domain names is consistent with previous UDRP decisions, where even slight deviations or additions to a well-known trademark have not been deemed sufficient to avoid confusing similarity. See, e.g., *Averitt Express, Inc. v. 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2021-0846](#) (*addition of the misspelled word "careeers" in < averittcareeers.com > did not prevent a finding of confusing similarity*); *Averitt Express, Inc. v. Domain Administrator, See PrivacyGuardian.org / NameSilo, LLC, Expired Domain*, WIPO Case No. [D2021-4258](#).

Accordingly, the Panel finds the disputed domain name is confusingly similar to the AVERITT Marks in which Complainant has rights. 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, 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, and if successful 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 may be deemed to have satisfied the second element.

[WIPO Overview 3.0](#), section 2.1. See also *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](#).

Paragraph 4(a)(ii) of the Policy also directs an examination of the facts to determine whether a respondent has rights or legitimate interests in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or legitimate interests.

The first example, under paragraph 4(c)(i), is where “before any notice to you of the dispute, your 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”.

Here, the annexes to the Complaint show that the disputed domain name resolves to a website configured by Respondent to impersonate Complainant, displaying Complainant’s official logo, advertising sales, and rentals of shipping containers, which are related to goods and services offered by Complainant, and soliciting the collection of users’ sensitive personal information disguised as a form to request a quote. Respondent has also configured an MX record for the disputed domain name which supports Complainant’s contention that Respondent may be using the disputed domain name for sending fraudulent emails. Complainant contends Respondent created such configuration to lead consumers to reasonably believe Respondent’s website originates with or is affiliated with Complainant and is used to generate revenues for Respondent’s commercial benefit from the sale of Respondent’s purported competing freight transportation services or an unlawful phishing scheme.

Prior UDRP panels have held that the use of a domain name to confuse and attract Internet users through misuse of a widely recognized trademark, and the provision of content which promotes goods and services impersonating and competitive to a complainant cannot be considered use in connection with a bona fide offering of goods or services under paragraph 4(c)(i). See *The Clorox Company v. WhoisGuard Protected, WhoisGuard, Inc. / Enos Villanueva, Melissa Rosenberg, Yang Ming*, WIPO Case No. [D2021-0603](#).

Prior UDRP panels have also held that the use of a domain name in furtherance of unlawful activity involving impersonation and fraud, such as a phishing attack, cannot confer rights or legitimate interest on a respondent. See [WIPO Overview 3.0](#), section 2.13. See also, *Swiss Re Ltd v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1549](#); *Springer Nature Limited v. Registration Private, Domains By Proxy, LLC / Collections Springer Nature*, WIPO Case No. [D2020-0955](#) and *The Commissioners for HM Revenue and Customs v. George Hill*, WIPO Case No. [D2020-0454](#).

Applying the foregoing decisions to these facts this Panel finds the disputed domain name is not being used in connection with a bona fide offering of goods or services sufficient to demonstrate Respondent has any rights or legitimate interests in the disputed domain name under the factors specified by paragraph 4(c)(i) of the Policy.

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 that due to its extensive use and advertising of the AVERITT Marks for over 50 years, and the international reach of Complainant's freight transport and storage services, it is not plausible that Respondent could have been unaware of Complainant at the time of registration of the disputed domain name. Complainant submits persuasive evidence in support its contention: Google first page search results using "Averitt" as the search term display only Complainant and direct the searcher to the Official AVERITT Mark Website; and a review of the Website shows images and videos displaying cargo shipping containers used in Complainant's freight transport services.

The Panel finds that Respondent's configuration of the disputed domain name without Complainant's authorization, to incorporate the AVERITT Mark in its entirety and the term "container", shows both Respondent's actual knowledge of the AVERITT Marks and the Mark's widespread recognition, especially in the United States where Respondent is located, and where the AVERITT Marks has been in use for over least 50 years before Respondent registered the disputed domain name. Prior UDRP panels have found that where, as here, it would be implausible to believe that Respondent selected and was using the disputed domain name for any other purpose than to trade on Complainant's trademark rights and reputation, establishes a fact pattern that repeatedly has been held to constitute bad faith registration and use. See *Houghton Mifflin Co. v. The Weathermen, Inc.*, WIPO Case No. [D2001-0211](#); see also *Philip Morris Incorporated v. Alex Tsytkin*, WIPO Case No. [D2002-0946](#).

Complainant also contends such configuration and use of the disputed domain name to redirect users searching for Complainant to Respondent's copycat website advertising goods and services related to Complainant as noted in Section 6.B above, constitutes additional evidence of bad faith under paragraph 4(b)(iii) of the Policy. Prior UDRP panels have found that where, as here, it would be implausible to believe that Respondent selected and was using the disputed domain name for any other purpose than to target Complainant's mark and trade on Complainant's trademark rights and reputation, Respondent was disrupting Complainant's business by diverting business and prospective business away from Complainant and its goods and services.

The Panel finds Respondent's actions are in opposition to Complainant and disruptive to Complainant's business and therefore establishes a fact pattern that repeatedly has been held to constitute bad faith registration and use under paragraph 4(b)(iii) of the Policy. See *Galderma Holding S.A. v. Withheld for Privacy Purposes Privacy service provided by Withheld for Privacy ehf / Yves Aya*, WIPO Case No. [D2021-0981](#); see also *Expedia, Inc. v. European Travel Network*, WIPO Case No. [D2000-0137](#).

Prior UDRP panels have also held that a respondent's selection of a disputed domain name that comprises a complainant's mark in its entirety demonstrates a respondent's actual knowledge to support a finding of bad faith in registering and using the domain name. See, e.g., *Lloyds Bank Plc v. Marc Wiese*, WIPO Case No. [D2015-0914](#); see also, *Heineken Brouwerijen B.V. v. Mark Lott*, WIPO Case No. [D2000-1487](#). Moreover, panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Finally, as noted in 6B above, Respondent has intentionally configured the disputed domain name to enhance confusing similarity to Complainant's AVERITT Mark in competition with Complainant's

transportation services. Prior UDRP Panels have found these facts demonstrate a clear indication that Respondent abused Complainant's AVERITT Mark by incorporating it into the disputed domain name to create a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of Respondent's website to intentionally attract Internet users to its website for Respondent's own commercial gain and, therefore, registered and used the disputed domain name in bad faith in violation of paragraph 4(b)(iv) of the Policy. See, e.g., *Microsoft Corporation v. Gioacchino Zerbo*, WIPO Case No. [D2005-0644](#); *Royal Bank of Canada v. China Capital Investment Limited*, WIPO Case No. [D2017-1025](#); *Travelscape, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Irwin Periola*, WIPO Case No. [D2020-2741](#).

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 <averittcontainer.com> be transferred to Complainant.

*/Scott R. Austin/*

**Scott R. Austin**

Sole Panelist

Date: October 15, 2024