

ADMINISTRATIVE PANEL DECISION

Vanguard Trademark Holdings USA LLC v. Larry Hicks, NetPlatform, Inc.
Case No. DIO2022-0059

1. The Parties

The Complainant is Vanguard Trademark Holdings USA LLC, United States of America (“United States”), represented Harness, Dickey & Pierce, PLC., United States.

The Respondent is Larry Hicks, NetPlatform, Inc., United States.

2. The Domain Name and Registrar

The disputed domain name <alamofirst.io> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 22, 2022. On December 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 6, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 11, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 January 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on February 10, 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 in car rental business. It owns the trademark ALAMO which it has registered in the United States (e.g., Reg. No. 1,097,722, registered on July 25, 1978). According to the Whois records, the disputed domain name was registered on July 13, 2020. The disputed domain name is not associated with an active website but redirects to a Registrar-provided parking page featuring sponsored advertisements.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the 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

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied, 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 or is being used in bad faith.

A. Identical or Confusingly Similar

This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.¹ This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the ALAMO mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the ALAMO mark in its entirety with the term "first", which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's ALAMO mark. See [WIPO Overview 3.0](#), section 1.8. The ALAMO mark remains sufficiently recognizable for a showing of confusing similarity under the Policy.

The Complainant has established this first element under the Policy.

¹ Given the similarities between the .IO Policy and Rules and the Uniform Domain Name Dispute Resolution Policy ("UDRP") and Rules, the Panel finds UDRP precedent to be relevant to this case.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) the Complainant has not licensed or otherwise permitted the Respondent to use the ALAMO mark, or any variation thereof, in connection with any goods or services or to apply for any domain name incorporating the Complainant's ALAMO mark, or any variation thereof, (2) use of the ALAMO mark in the disputed domain name is neither a *bona fide* offering of goods or services nor legitimate noncommercial or fair use under the Policy, (3) the disputed domain name resolves to a parked webpage containing pay-per-click links related to the Complainant's business, and (4) the Respondent has not been known by the Complainant's ALAMO mark.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor. Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered or Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered or is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] web site or location".

The Respondent has not provided any explanation for its registration of the disputed domain name which, as discussed above, is confusingly similar to the Complainant's ALAMO mark. Under the standards of the Policy, the Panel finds the Respondent more likely than not had the Complainant's trademark in mind when registering the disputed domain name, which in the circumstances of this case constitutes bad faith registration of the disputed domain name. Bad faith use is shown by having the disputed domain name show revenue-generating sponsored advertisements. Bad faith is also shown from the Respondent's use of a privacy service to register the disputed domain name.

The Complainant has established this third element under 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 <alamofirst.io> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: February 28, 2023