



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Fall Nummer: D2004-00227

Entscheidung vom 28. April 2004

Case No. D2004-00227

1. The Parties

The Complainant is Tauck, Inc. ..., represented by ... United States of America.
The Respondent is A. K., Pakistan.

2. The Domain Name and Registrar

The disputed domain name <taucktours.com> ("the Disputed Domain Name") is registered with eNom.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 23, 2004. On March 24, 2004, the Center transmitted by email to eNom a request for registrar verification in connection with the Disputed Domain Name. On March 25, 2004, eNom transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the administrative, billing, and technical contact. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), 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(a) and 4(a), the Center formally notified the Respondent of the Complaint and the proceedings commenced on March 26, 2004. In accordance with the Rules, paragraph 5(a), the due date for Response was April 15, 2004. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 20, 2004.

The Center appointed Michael D. Cover as the sole panelist in this matter on April 23, 2004. 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 Respondent has not disputed the following facts submitted by the Complainant:

The Complainant is the owner of numerous trade mark registration for the terms "Tauck" and "Tauck Tours", including US trade mark registration No. 2,638,317 TAUCK and No. 2,587,533 TAUCK TOURS in Class 39 for "Travel-related services, namely booking and arranging individual and group tours".

Since at least as early as 1925, the Complainant has been using the marks TAUCK and TAUCK TOURS in conjunction with a wide variety of travel and tourism services. The Complainant's name is recognized worldwide as a leader in the travel industry.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Disputed Domain Name is identical to the Complainant's TAUCK and TAUCK TOURS marks which are well-known and which were put into use and registered well before the Disputed Domain Name was registered.

The Complainant also contends that the Respondent has no right or legitimate interests in the Disputed Domain Name. In particular, the Complainant states "on information and belief" that:

- The Respondent is in the business of reselling and/or licensing domain names to third parties for commercial gain;
- The Respondent has caused customers entering <taucktours.com> to be redirected to the "www.vipfares.com" website; and
- The Respondent has thereby created a likelihood of confusion with the Complainant's TAUCK and TAUCK TOURS trade marks.

The Complainant notes that, by its Counsel, it demanded the transfer of the Disputed Domain Name on February 10, 2004.

The Complainant contends that the Disputed Domain Name is confusingly similar to the Complainant's trade mark TAUCK (which it contains) and is identical to the Complainant's trade mark TAUCK TOURS.

The Complainant also contends that the Respondent has no rights or legitimate interest in the Disputed Domain Name, as it does not own any trade mark registrations comprising <taucktours.com>, is not commonly known by the Disputed Domain Name and is not making legitimate non-commercial or fair use of the Disputed Domain Name. The Complainant refers to the redirection of customers as described above.

Finally, the Complainant maintains that the Disputed Domain Name was registered and is being used in bad faith, by virtue of the redirection described above. The Complainant then requests the Panel to issue a decision that the Disputed Domain Name be transferred to the Complainant immediately.

The Complainant also refers to WIPO Case No. D2000-1683 relating to <taucktours.com> and <taucktours.net> and notes the strange circumstances under which the Disputed Domain Name was registered by the Respondent whilst being the subject of a transfer with another registrar.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the policy requires that the Respondent, as registrant of the Disputed Domain Name, submits to a mandatory administrative proceedings in the event that the Complainant establishes:

- (i) the Disputed Domain Name is identical or confusingly similar to a trade 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

The Panel finds that the Complainant has established its rights in the trade marks TAUCK and TAUCKTOURS.

The Disputed Domain Name incorporates in whole the Complainant's famous registered trade mark TAUCK. It is well established that the incorporation of the distinctive element of a complainant's trade mark in the Respondent's domain name renders it confusingly similar (see, for example, *Dell Inc. v. Dell Domains* WIPO Case No. D2003-0854).

The Disputed Domain Name is identical to the Complainant's famous registered trade mark TAUCK TOURS.

Accordingly, the Disputed Domain Name is identical to the Complainant's famous registered trade mark TAUCK TOURS and confusingly similar to the Complainant's famous registered trade mark TAUCK.

B. Rights Or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interest in the Disputed Domain Name. The Complainant maintains that the Respondent is in the business of reselling and/or licensing domain names to third parties for commercial gain. The Panel finds that, although the Respondent has not disputed the facts submitted by the Complainant, the Complainant has not established that the Respondent is in such business.

Nonetheless, the Respondent has not demonstrated any rights and legitimate interests in the Disputed Domain Name. There is no evidence of use (or preparations for use) in connection with a bona fide offering of goods or services nor that the Respondent is commonly known by the Disputed Domain Name or that the Respondent is making legitimate non-commercial or fair use of the Disputed Domain Name.

C. The Disputed Domain Name has been registered and is being used in bad faith

The non-exhaustive list, set out in the UDRP relating to bad faith includes the fact that the domain name in question has been registered or acquired primarily for the purposes of selling or transferring the domain name to the complainant. As the Panel has noted, it does not accept there is sufficient evidence to find that this is the case here.

However, Exhibit C to the Complaint does establish that the Respondent is directing visitors to the Disputed Domain Name to a rival site see, for example, *Ross-Simons, Inc. v. Pirro Bettenson*, WIPO Case No. D2004-0137. Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith.

7. Decision

For all 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 <taucktours.com> be transferred to the Complainant.

(Sole Panelist)