



## ADMINISTRATIVE PANEL DECISION

### *SellAnyCar.com FZE vs. Mr. Faiyaz Chand*

Case No. A2017-0003

#### 1. The Parties

The Complainant is SellAnyCar.com FZE of SAIF Office P8-09-16 Sharjah, UAE, represented by Ms. Mariam Sabet of Al Tamimi & Co.

The Respondent is Mr. Faiyaz Chand represented by Mr. Chad Dowle of Rouse & Co. - The Maze Tower/Sheikh Zayed Road, Dubai

#### 2. The Domain Name and Registrar

The disputed domain name is <wecashanycar.com> registered with GoDaddy.com (the “Registrar”).

#### 3. Procedural History

The Complaint was filed with the Arab Center for Dispute Resolutions (ACDR) on November 21<sup>st</sup> 2017. On November 23<sup>rd</sup> 2017, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 1<sup>st</sup> 2017, 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 ACDR 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 December 2<sup>nd</sup> 2017. In accordance with the Rules, paragraph 5, the due date



for Response was December 24<sup>th</sup> 2017. The Respondent submitted their response in formal E-mail on December 24<sup>th</sup> 2017. On December 31<sup>st</sup> the respondent submitted supplemental response to the complaint.

On January 7<sup>th</sup> 2018 the respondent submitted additional supplemental response to the complaint. The complainant has submitted supplemental response to the respondent's response on January 22<sup>nd</sup> 2018. On January 23<sup>rd</sup> 2018 the respondent submitted a response to the supplemental filling by complainant. On January 25<sup>th</sup> 2018 the panel requested additional information and it was sent to the complainant and the respondent. On February 2<sup>nd</sup> 2018 the complainant and respondent submitted their response to the panel requirements.

The Center appointed the 3-member panel Mr. Charles Shaban as the Presiding Panelist, Ms. Nathalie Dreyfus as Co-panelist and Mr. Debrett Lyons as Co-panelist in this matter on January 11th 2018. 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 company incorporated in the UAE, doing business in online used car trading since June 2013.

The Complainant registered the domain name CASHANYCAR.com on February 04, 2016 and filed the trademark CASHANYCAR on May 19, 2016, duly registered on January 30, 2017.

The Respondent registered the Domain Name on August 7, 2014 and started its trade activity under We Cash Any Car Co. LLC on February 19, 2015; the

#### **5. Discussion and Findings**

Paragraph 4(a) of the Policy requires the Complainant to prove all three of the following elements to be entitled to the relief sought: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or



legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has shown valid trademark rights in Cashanycar, filed on May 19, 2016 and duly registered in the United Arab Emirates.

The disputed Domain Name is composed of the Complainant's trademark together with the personal pronoun "we". The adjunction of a personal pronoun is sufficient to find confusing similarity in the sense of the Policy. See, *Valero Energy Corporation and Valero Marketing and Supply Company v. Valero Energy*, WIPO Case No. D2017-0075; *M/s Daiwik Hotels Pvt. Ltd v. Senthil Kumaran S, Daiwik Resorts*, WIPO Case No. D2015-1384; and *ERGO Versicherungsgruppe AG v. Idealist*, WIPO Case No. D2008-0377.

As it is also well established, the applicable gTLD in a domain name such as ".com" is viewed as a standard registration requirement and, as such, is typically disregarded under the confusing similarity test. See, *RX America, LLC v. Matthew Smith*, WIPO Case No. D2005-0540 and *Sanofi-Aventis v. US Online Pharmacies*, WIPO Case No. D2006-0582.

The Domain Name is therefore confusingly similar to the Complainant's trademark.

Even if the Complainant do not have prior trademark rights as the Domain Name was registered previously to the Complainant's trademark, the WIPO Overview 3.0 stated in its 1.1.1 to 1.1.3 paragraphs<sup>1</sup> that it is not relevant to

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*1.1.1 The term "trademark or service mark" as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (sometimes referred to as common law) marks.*

*1.1.2 Noting in particular the global nature of the Internet and Domain Name System, the jurisdiction(s) where the trademark is valid is not considered relevant to panel assessment under the first element. Also, the goods and/or services for which the mark is registered or used in commerce, the filing/priority date, date of registration, and date of claimed first use, are not considered relevant to the first element test. These factors may however bear on a panel's further substantive determination under the second and third elements.*



see if the trademarks rights are prior or no to the Domain Name registration. Since the Domain Name are identical or confusingly similar to a trademark in which the Complainant has rights. Put another way, the relative timing of the trademark registration and the creation date of the disputed domain name may be – and, as in this case, are – relevant to matters of legitimate interest or bad faith but is an unimportant consideration under this part of the Policy which considers whether those rights exist or not.

The Panel finds that the first element is fulfilled.

## **B. Rights or Legitimate Interests**

The Respondent has been doing business under the trade name “We Cash Any Car Co LLC” since 2015. At that time, the Complainant had no trademark rights on “CASHANYCAR” sign. It therefore seems that the Respondent has proven to have legitimate interests in the Domain Name since it has been known under the “We Cash Any Car” sign since 2015, which means that its use of the disputed sign by the Respondent precedes the Complainant’s trademark rights.

In other words the complainant has established trademark rights by reason of its UAE registration, however for the purposes of further discussion the Panel makes certain observations about the complainant’s asserted use of the trademark which might otherwise have entitled it to claim common law (unregistered) trademark rights.

The material provided by the complainant under Annexures 2, 3, and 5 to the complaint, none shows either trademark rights or indeed any notable use of the trademark at issue. Annex 2 entitled “evidence supporting complainant’s profile” includes photos of the business premises showing the name SellMyCar.com (but not the trademark). It includes internet hits from Aug. 1, 2013 onwards but this is unlinked to the trademark in any clear way. It shows

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1.1.3 *While the UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed. The fact that a domain name may have been registered before a complainant has acquired trademark rights does not by itself preclude a complainant’s standing to file a UDRP case, nor a panel’s finding of identity or confusing similarity under the first element. Where a domain name has been registered before a complainant has acquired trademark rights, only in exceptional cases would a complainant be able to prove a respondent’s bad faith.”*



images of the manager of the complainant's business but again not use of the trademark.

Annex 3 includes trade licenses for "Sell My Car Inspect & Assessment Services LLC" and other documents from the UAQ Chamber of Commerce & Industry or the Govt. of Umm Al Quwain or the SAIF Zone but none are connected with the trademark at issue.

Finally, Annex 5 only reinforces the respondent's complainant that any use of the trademark (in particular the complainant's domain name corresponding with its relevant trademark) is as a simple link back to the complainant's primary website of [www.sellmycar.com](http://www.sellmycar.com).

In the result, it can be concluded that C does not have either common law trademark rights or even a legitimate interest in the relevant trademark which dates earlier than the date of creation of the disputed domain name.

Therefore, the Respondent succeeds to establish that it is commonly known by the Domain Names or a name corresponding to the Domain Names as stated by the WIPO Overview 3.0 in its paragraph 2.3<sup>2</sup>. In previous cases,

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*"2.3 Panels have addressed a range of cases involving claims that the domain name corresponds to the respondent's actual given name (including in combination with initials), stage name, nickname, or other observed moniker.*

*For a respondent to demonstrate that it (as an individual, business, or other organization) has been commonly known by the domain name or a name corresponding to the domain name, it is not necessary for the respondent to have acquired corresponding trademark or service mark rights.*

*The respondent must however be "commonly known" (as opposed to merely incidentally being known) by the relevant moniker (e.g., a personal name, nickname, corporate identifier), apart from the domain name. Such rights, where legitimately held/obtained, would prima facie support a finding of rights or legitimate interests under the UDRP.*

*Insofar as a respondent's being commonly known by a domain name would give rise to a legitimate interest under the Policy, panels will carefully consider whether a respondent's claim to be commonly known by the domain name – independent of the domain name – is legitimate. Mere assertions that a respondent is commonly known by the domain name will not suffice; respondents are expected to produce concrete credible evidence.*

*Absent genuine trademark or service mark rights, evidence showing that a respondent is commonly known by the domain name may include: a birth certificate, driver's license, or other government-issued ID; independent and sustained examples of secondary material such as websites or blogs, news articles, correspondence with independent third parties; sports or hobby club publications referring to the respondent being commonly known by the relevant name; bills/invoices; or articles of incorporation. Panels will additionally typically assess whether there is a general lack of other indicia of cybersquatting. In appropriate cases panels may refer to the respondent's domain name-related track record more generally".*



Panel have denied the complaint on this ground, *e.g.* that the respondent is commonly known by the disputed domain name which therefore grant it rights and legitimate interests in the disputed domain name (see *Alessandro International GmbH v. Alessandro Gualandi*, WIPO Case No. D2014-2111, <alessandro.com>, Denied; *Argenta Spaarbank NV v. Barbara Lesimple / Argenthal Private Capital Limited*, WIPO Case No. D2015-0467, <argenthal.com>, Denied; *CKL Holdings N.V. v. Paul Flammea*, WIPO Case No. D2016-1340, <flammea.com>, Denied).

Furthermore, the disputed sign “We Cash Any Car”, used as the Domain Name and the Respondent’s trade name, is composed of generic and descriptive terms, which is, in our opinion, another indication of the proof of the rights and legitimate interest held by the Respondent in the disputed domain names. Indeed, in previous cases, Panel have stated of the legitimate interest of the defendant when the terms of the disputed domain name were too generic, in NAF Case No. 267475 the Panel have stated that “*where a domain name is generic, the first person to register it in good faith is entitled to the domain name and it is considered a legitimate interest*”. Furthermore, in NAF Case No. 98813, 96364 and 97682, the Panel have stated that “*Respondent has persuasively shown that the Domain Name is comprised of generic and/or descriptive terms, and in any event is exclusively associated with Complainant’s business*” and have concluded in the existence of rights and legitimate interests for the respondent in the disputed domain name. Please see also previous WIPO cases such as WIPO Case No. D2011-0711 and *Jet Marques v. Vertical Axis, Inc* WIPO Case No. D2006-0250 that state in the same way.

The Panel finds that the Complainant did not succeed to prove that the Respondent has no rights or legitimate interests on the Domain Name. Therefore the second element is not fulfilled.

### **C. Registered and Used in Bad Faith**

*As the second element is not fulfilled, the Panel does not have to address the third element, but the Panel will provide its opinion about the third element for reference only.*



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Since the Complainant does not have prior trademark rights on the Domain Name, it cannot argue that the registration of the Domain Names was made in bad faith. Indeed, the Respondent registered the Domain Name prior to any trademark rights were established by the Complainant and in keeping with its adopted trade name.

However, the Complainant registered the “CASHANYCAR” trademark, after the “SELLANYCAR.COM” and “BUYANYCAR.COM” trademarks. Also, the Respondent has been dealing with the Complainant before it started its activity. The Respondent cannot therefore pretend that it was not aware of the Complainant and its activity. The Respondent also argues that the Complainant and the Respondent have a fair competition relationship, which proved that the Respondent is aware of the Complainant and its activity.

Although on the evidence it would seem that the Complainant’s and the Respondent’s websites are similar and that the Respondent may have copied the Complainant’s website on bad faith to gain some commercial advantage, it nevertheless remains that the third requires a combination of registration and use in bad faith. The third requirement is therefore not fulfilled as previous panels have stated before (see *Teradyne, Inc. v. 4Tel Technology* WIPO Case No. D2000-0026; *Digital Vision, Ltd. v. Advanced Chemill Systems* WIPO Case No. D2001-0827; *Volvo Trademark Holding v. Peter Lambe* WIPO Case No. D2003-1029; *Yoomedia Dating Limited v. Cynthia Newcomer / Dateline BBS* WIPO Case No. D2004-1085; *MediaSpan Group, Inc. v. Raghavan Rajagopalan* WIPO Case No. D2005-1282; *Guildline Instruments Limited v. Anthony Anderson* WIPO Case No. D2006-0157; *Validas, LLC v. SMVS Consultancy Private Limited* WIPO Case No. D2009-1413; *Camon S.p.A. v. Intelli-Pet, LLC* WIPO Case No. D2009-1716; *Mile, Inc. v. Michael Burg* Case No. WIPO Case No. D2010-2011; *Georgia-Pacific Consumer Products v. Mark Gallo* WIPO Case No. D2010-2062)



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## **6. Decision**

For the foregoing reasons, and the above arguments, we believe that the complaint should be declined (no transfer of the disputed domain name).

### **Panelists:**

**Nathalie Dryfus**  
**Debrett Lyons**  
**Charles Shaban**

**Three-Member Panel**  
Date: February 5, 2018