



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1801124
Complainant:	FCA Australia Pty Ltd.
Respondent:	Thomson Friday
Disputed Domain Name(s):	< chrysleraustralia.com >

1. The Parties and Contested Domain Name

The Complainant is FCA Australia Proprietary Limited (Pty Ltd), of 437 Plummer Street, Port Melbourne, Victoria 3207, Australia. The authorized representative of the complainant is Matthew Prescott, Thomson Geer, Level 7, 19 Gouger Street, Adelaide, South Australia 5000, Australia.

The Respondent is Thomson Friday, of 315 S. Randolph Street, Indianapolis IN 46201, United States of America (USA).

The domain name at issue is < chrysleraustralia.com >, registered by Respondent with Namecheap Incorporation (Inc.), of 4600 East Washington Street, Suite 305, Phoenix, AZ 85034, USA.

2. Procedural History

On June 25, 2018, the Complainant submitted the Complaint in English on domain name < chrysleraustralia.com > to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN on October 24, 1999, and the Asian Domain Name Dispute Resolution Centre Supplemental Rules in effect as of February 28, 2002. The Complainant requested a single person panel.

After receiving the Complaint, the Centre, in accordance with the Supplemental Rules, verified that the Complaint complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on June 25, 2018, the Centre requested the Registrar to confirm: (1) that the disputed domain name was registered with the Registrar, (2) whether the Respondent is the registrant or holder of the name, and (3) whether the Policy applies to the name; and to specify: (4) the language of the Registration Agreement of the disputed domain name, (5) WhoIs information for the disputed domain name, and (6) the current

status of the domain name. Also, by email message dated June 25, 2018, the Center confirmed the receipt of the Complaint.

On June 25, 2018, the Registrar provided its response to the Centre through which it confirmed that: (1) the name was registered with Namecheap, Inc., (2) the Respondent is the registrant or holder of the name, and (3) the Policy applies to the name. The Registrar also stated that (4) the registration agreement is in the English language, (5) provided name and contact information pertinent to the name as reflected in its WhoIs database, and stated that (6) the domain name was locked and would remain locked during the pending administrative proceeding.

On July 5, 2018, the Centre sent the Complaint to the Respondent. The Respondent was then provided with a 20-calendar day period, expiring on July 25, 2018, to file its Response both with the Centre and the Complainant. As of July 25, 2018, the Respondent had not filed any Response with the Centre. Accordingly, on July 26, 2018, the Centre advised the parties by email that the Respondent had not filed any Response to the Complaint with the Centre and, as such, the Centre would then proceed to appoint a Panelist for this matter.

Pursuant to the Rules and Supplemental Rules, the Centre, by email dated August 2, 2018, contacted the undersigned, Professor Julien Chaisse, requesting his service as a Sole Panelist for this dispute. Subsequently, on the same day, Professor Chaisse responded and affirmed his ability to act completely independently and impartially in this matter. Subsequently, the Centre, through an email dated August 3, 2018, notified the Parties of the appointment of Professor Chaisse as the Sole Panelist.

The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules. Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before August 17, 2018.

3. Factual background

The Complainant: FCA Australia Pty Ltd.

A. The Complainant's FCA Australia Pty Ltd. Marks

The Complainant and its affiliated entities and predecessors in title have continuously used, and continue to use, the trade mark "Chrysler" (Chrysler Mark) since as early as 1925.

The abbreviation "FCA" stands for Fiat Chrysler Automobiles. FCA US Limited Liability Company (LLC) is the primary intellectual property owner in the FCA group. FCA US LLC licenses its subsidiaries to use the trademarks of the FCA group.

The Complainant's affiliated entities and predecessors in title hold trade mark registrations in many countries throughout the world, including in the USA since as early as 1946 and in Australia since as early as 1950, in connection with the sale of motor vehicles and related goods and services. The Complainant is licensed to use the FCA group trade marks in Australia. In this respect, the Complainant provided evidence and details of the trade mark registrations in Australia and the USA for the Mark in Annexure 2 to the Complaint.

B. The Complainant and its activities

The Complainant and its affiliated entities and predecessors in title have continuously used the Chrysler Mark worldwide in connection with motor vehicles and related goods and services.

FCA Australia Pty Ltd. is part of an extensive, worldwide distribution and sales network which sells vehicles and other products under the brand "Chrysler", and formerly operated under the name "Chrysler Australia". Current model Chrysler vehicles available for sale in Australia and other countries include the "300C Luxury" and "300 SRT" vehicles. The Complainant promotes its Chrysler vehicles through a wide range of media, including through the website www.chrysler.com.au. The website www.chrysler.com is operated by FCA US LLC.

The Complainant's name and vehicles are well known throughout the world, and the Complainant has acquired valuable rights and substantial goodwill in the Chrysler Mark.

The Respondent

As indicated in the WhoIs registration record provided in Annexure 1 to the Complaint, the Respondent registered the disputed domain name on April 22, 2018.

The Centre confirmed that documents have been sent to the Respondent's address as registered with the registrar. However, the Centre did not receive a Response Form R from the Respondent for the Domain Name Dispute concerning Domain Name < chrysleraustralia.com > within the required period of time.

The Respondent is to be considered in default.

4. Parties' Contentions

Since the Respondent defaults, the Panel understands that the Complainant bears the burden of pleading at least a prima facie case. See, e.g., *Cyro Industries v. Contemporary Design*, WIPO, No. D2000-0336, Jun. 19, 2000 (holding that in cases of default, panels must pay special attention to evaluating the accuracy of Complainant's submissions); *Softquad Software Inc. v. Eleven-Eleven Ltd, DeC*, No. AF-0143 (Jun. 1, 2000) (stressing that in default cases, the burden of proving required elements remains with the Complainant).

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The complainant submits that the Domain Name is confusingly similar to the Chrysler Mark.

The only differences between the Complainant's "Chrysler" registered trade mark and the Domain Name are the inclusion of the word "Australia" and the inclusion of the generic

top-level domain ".com". The inclusion of ".com" should not be taken into account when considering the similarity of the Domain Name and the Chrysler Mark for the purposes of paragraph 4(a)(i) of the UDRP. The only other difference between the Domain Name and the Chrysler Mark is the inclusion of the country name "Australia". The Domain Name incorporates the entirety of the distinctive Chrysler Mark.

In any case, the Complainant is the authorised user in Australia of the Chrysler brand, and the Complainant's former name is Chrysler Australia Pty Ltd (as shown on the Complainant's Certificate of Incorporation, set out in Annexure 6).

The Domain Name is likely to cause confusion among consumers and Internet users interested in the Complainant's products. It is probable that such consumers will expect the Domain Name to resolve to an official website operated by the Complainant. As noted above, the Complainant's former name was "Chrysler Australia", which is likely to further increase the risk of such confusion.

From these facts, it is argued that it is apparent that the Disputed Domain Name is confusingly similar to the Complainant's marks and that the respondent intended to, and is currently, riding on the reputation of the Complainant's business.

- ii. The Respondent has no rights or legitimate interests in respect of the domain name(s):

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because of the unauthorized use of mark Chrysler, the meaning of Chrysler in ordinary language, the illegitimate use of domain for commercial gain, and the absence of *bona fide* offering of goods or services.

The complainant submits that the Respondent's use of the Domain Name demonstrates that it is not being used in connection with the bona fide offering of goods or services by the Respondent. Rather, the Respondent is seeking to profit from the Complainant's goodwill by providing sponsored links to third party websites, and to use the registration of the Domain Name to allow it to use email addresses containing the Domain Name.

The Complainant considers it highly unlikely that the Respondent is, or has ever been, commonly known by the Domain Name. If it had, the Complainant would have been aware of this as the Complainant carefully monitors the use of its trade marks by unauthorized third parties. The Complainant is of the view that any use that the Respondent could demonstrate of the Domain Name in legitimate business is likely to constitute trade mark infringement of the Chrysler Marks.

The Complainant has not (and none of its affiliated entities have) authorized, licensed, endorsed or otherwise permitted the Respondent to register or use the Domain Name or to use the Chrysler Mark in any way.

- iii. The disputed domain name(s) has/have been registered and is/are being used in bad faith:

The Complainant submits that the Respondent has shown bad faith in registering and using

the word “chrysleraustralia” because of two essential reasons: on the one hand, the Respondent was aware of Chrysler trademark and activities, and, on the other hand, there is an intent to cause confusion.

Firstly, at the time of registration, the Respondent must have known of the Complainant’s longstanding use and registration of the Chrysler Mark. The use of the Email Addresses and posting of the advertisements indicates that the registration of the Domain Name was an intentional and conscious attempt to exploit the brand recognition and reputation of the Complainant in order to dishonestly obtain personal information.

Secondly, the Complainant provided evidence of a number of advertisements placed on websites targeted at job-seekers in India. These advertisements purport to promote an offer for employment by the Complainant but are not authorized by the Complainant or any affiliated entity of the Complainant.

- The advertisements include contact email addresses containing the Domain Name (eg, *name@chrysleraustralia.com*). Several persons responding to the false advertisements have received emails sent using the Email Addresses, including correspondence impersonating senior management personnel of the Complainant. The use by the Respondent of the name of at least one senior management executive of the Complainant further demonstrates that the Respondent is engaging in deliberate targeting of the Complainant’s business and shows that the Respondent's activities do not relate to a legitimate business operating under the name "Chrysler". This is also shown by the inclusion in the correspondence of the well-known "pentastar" logo used by the Complainant's corporate group.
- Furthermore, the correspondence sent from the Email Addresses has attached false documentation, including a purported contractual offer of employment by “Chrysler Australia Ltd” which contains a false signature of a senior management executive of the Complainant. Examples of such correspondence were set out in Annexure 7. The intent of this correspondence appears to be to obtain the personal information of the individuals concerned. The personal information requested by the persons operating the Email Addresses include copies of the passports of the concerned individuals.
- The Complainant submits that the most likely explanation for this conduct is that the Email Addresses are being used to operate a type of email scam known as “phishing”. In this connection, it appears that the Respondent registered the Domain Name in order to operate the Email Addresses to facilitate the unauthorised and misleading advertisements described above, and consequently the fraudulent solicitation of personal information.

For the foregoing reasons, it can be reasonably inferred that the Respondent was aware of the Complainant’s Chrysler marks well before registering the Disputed Domain Name < chrysleraustralia.com > and that they are intentionally attempting to attract users for commercial gain by creating a likelihood of confusion.

B. Respondent

As indicated in the procedural history, the Respondent was provided with a 20-calendar day period, expiring on July 25, 2018, to file its Response both with the Centre and the Complainant. In this connection, the Respondent is to be considered in default and the Panel will decide the dispute based on the information available to it and may draw such inferences as it deems appropriate from the Respondent's failure to submit a timely Response.

5. Findings

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed representations.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

This element of the Policy requires the Complainant to prove that it has rights in a trademark or service mark, and that the Disputed Domain Name is identical to or confusingly similar to such trademark or service mark (See Julien Chaisse, *Legal Issues of Economic Globalization-- A Commentary on the Law and Practice*, (2nd edition) The Hague/Hong Kong: Wolters Kluwer, 2017). The Complainant has submitted conclusive evidence that the domain name < chrysleraustralia.com > is confusingly similar to the trade mark "Chrysler" (Chrysler Mark) which have been continuously used and continue to be used by the Complainant and its affiliated entities and predecessors in title since 1925.

Firstly, the inclusion of ".com" should not be taken into account when considering the similarity of the Domain Name and the Chrysler Mark for the purposes of paragraph 4(a)(i) of the UDRP. This is confirmed in decisions such as *Arthur Guinness Son & Co (Dublin) Limited v Dejan Macesic*, D2000-1698 (WIPO January 25, 2001) and *ChipMOS TECHNOLOGIES INC v Charles Yeh* HK-0600083 (ADNDRC July 3, 2006), where it was found that the suffix ".com" is of no significance in assessing the identity of a domain name for the purposes of paragraph 4(a)(i) of the UDRP.

Secondly, the other difference between the Domain Name and the Chrysler Mark is the inclusion of the country name "Australia". The Domain Name incorporates the entirety of the distinctive Chrysler Mark. Previous UDRP panels have found that a domain name containing an entire trade mark can be confusingly similar to the trade mark notwithstanding the inclusion of some other word or words in the domain name (see *Telstra Corporation Limited v Barry Cheng Kwok Chu* D2000-0423 (WIPO June 21, 2000), *Pfizer Inc. v. United Pharmacy Ltd.* D2001-0446 (WIPO June 8, 2001), and *E.I. du Pont de Nemours and Company v. Richi Industry S.r.l.* D2001-1206 (WIPO November 20, 2001).

It has been accepted by a number of previous UDRP panels that the addition of a geographic term to a trade mark is insufficient in itself to avoid a finding of confusing similarity (one such example being *Organización Sánitas Internacional S.A., formerly known as Compañia de Promociones Internacionales de Servicios de Salud S.A. "Soprinsa" v. Domain Admin / Paulo Roberto Ribeiro Guimaraes* D2014-1310 (WIPO

September 15, 2014), in which the relevant geographical term was "*Brasil*"). Indeed, it has previously been found that the addition of a geographic term may render "*the domain name even more confusingly similar*" to the trade mark (see *Jaguar Land Rover Limited v. Phnom Penh Prestige, Tuy Sombo D2014-0977* (WIPO August 13, 2014), in which the relevant trade mark was "Land Rover" and domain name was "landrovercambodia.com").

In addition, UDRP panels have found domain names to be identical or at least confusingly similar when based on "close variant" or "close misspelling" of the mark in question (e.g. *AltaVista Company v. Grandtotal Finances Limited et al.*, WIPO Case No. D2000-0848; *Yahoo!Inc. v. Eitan Zviely et al.*, WIPO Case No. D2000-0273; *Société des Bains de Mer et du Cercle des Etrangers à Monaco v. Integrity Ltd.*, WIPO Case No. D2005-0404; *Guccio Gucci S.p.A. v. Huangwensheng, Shirley, wangliang, xiaomeng xiexun, jiangxiuchun*, WIPO Case No. D2012-0342).

There is no reason in the instant matter to depart from these decisions under the circumstances described above, not rebutted by the Respondent.

Thus, the Panel finds that the use of the word "australia" is not sufficient to negate the confusing similarity between the disputed domain names and the trademark. By contrast, the addition of certain words can "exacerbate [...] the confusing similarity between the [Complainant's] trademark and the Domain Name and increase [...] the risk of confusion between the Domain Name and the... trademarks". (*B & H Foto & Electronics Corp. v. Joel Deutsch*, WIPO Case No. D2010-2121). The Panel therefore holds that Complaint fulfils the first condition of paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which, under the circumstances here, would legitimize a claim to the disputed domain name under paragraph 4(c) of the Policy.

Firstly, the Respondent has never been authorized, licensed or otherwise permitted by the Complainant or its Licensor to use the mark Chrysler under any circumstances. The Respondent has no business relationship with the Complainant or its Licensor. The Respondent's name, address and other information cannot be linked with Chrysler. Further searches by the Complainant do not prove that the Respondent has any other rights with regard to the Chrysler mark.

Secondly, Chrysler is not a common term in usage and has no meaning except as a well-known registered mark. The respondent does not have any legitimate interests in registering or using part or the whole of the Disputed Domain Name. The Complainant and its Chrysler trademarks are well-known for its business due to its long-time operation and global sales. Therefore, it is likely that average online users searching for "Chrysler" are intending to visit the Complainant's website, and will be attracted and diverted to the Respondent's website, due to the similarity between the Disputed Domain Name and the Complainant's trademarks.

The Panel infers from the above that the Respondent is not using the name on either a non-commercial or fair use basis without intent to misleadingly divert consumers or tarnish any of the Complainant's marks, or, prior to receiving notice of this dispute, in connection with any bona fide offering of goods or services or demonstrable preparations for making such

an offering, thus failing to qualify under either of paragraphs 4(c)(i) and 4(c)(iii) of the Policy.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a) (ii) and 4(c) of the Policy.

C) Bad Faith

In accordance with Paragraph 4(a)(iii) of the Policy the Complainant must prove that the Domain Name has been registered and is being used in bad faith. The Complainant has adduced evidence to prove that by using confusingly similar disputed domain names, Respondents have intentionally attempted to attract, for commercial gain, Internet users to Respondents' websites offering Complainant's Chrysler products.

The Panel finds that it is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of the registration of the disputed domain name. The Panel also finds that the trademarks are not one that traders could legitimately adopt other than for the purpose of creating an impression of an association with Complainant. (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. D2009-0610). Moreover, Respondent has chosen not to respond to Complainant's allegations in the Complaint. According to the panel's decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company*, supra, "the failure of Respondents to respond to the Complaint further supports an inference of bad faith". (see also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. D2002-0787).

Furthermore, the Respondent is operating with intent to misleadingly divert consumers for commercial gain. The Respondent's website, which can be accessed through the Domain Name, contains only a list of sponsored links to third party websites that predominantly appear to lead to third party websites relating to the sale of motor vehicles, particularly Jeep and Chrysler vehicles. Printouts of the Respondent's website were set out in Annexure 3. The Complainant is aware that a number of advertisements have been placed on employment-related websites aimed at job-seekers primarily located in India. The Domain Name is part of the contact email addresses used in these advertisements, which are being used to encourage members of the public to provide personal information.

In summary, Respondent, by choosing to register and use the disputed domain name which is confusingly similar to Complainant's well-known trademarks, intended to ride on the goodwill of Complainant's trademarks in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of Respondent as far as the website to which the disputed domain name resolve is indicative of registration and use of the disputed domain names in bad faith. The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

6. Decision

Based on the above analysis, the Panelist decides that: (1) the disputed domain name < chysleraustralia.com > is confusingly similar to the Complainant's name or mark in which the complaint has rights; (2) the Respondent has no right or legitimate interest in respect of the disputed domain names; (3) the Respondent has registered and is using the domain name in bad faith.

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panelist grants the relief sought by the Complainant. The disputed domain name, < chysleraustralia.com >, is ordered transferred to the Complainant.

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Professor Julien Chaisse
Panelist

Dated: August 10, 2018