



## DECISION

Huawei Technologies Co., Ltd. v. Paul Wilson

Claim Number: FA1610001697867

### PARTIES

Complainant is **Huawei Technologies Co., Ltd.** (“Complainant”), represented by **Zak Muscovitch** of **Muscovitch Law P.C.**, Canada. Respondent is **Paul Wilson** (“Respondent”), Great Britain.

### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<huawei-technologies.co>**, registered with **NameCheap, Inc.**.

### PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

Paul M. DeCicco, as Panelist.

### PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on October 12, 2016; the FORUM received payment on October 12, 2016.

On October 14, 2016, NameCheap, Inc. confirmed by e-mail to the FORUM that the **<huawei-technologies.co>** domain name is registered with NameCheap, Inc. and that Respondent is the current registrant of the name. NameCheap, Inc. has verified that Respondent is bound by the NameCheap, Inc. registration

agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On October 18, 2016, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of November 7, 2016 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to [postmaster@huawei-technologies.co](mailto:postmaster@huawei-technologies.co). Also on October 18, 2016, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

Having received no response from Respondent, the FORUM transmitted to the parties a Notification of Respondent Default.

On November 10, 2016, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the FORUM appointed Paul M. DeCicco, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the FORUM'S Supplemental Rules and any rules and principles of law that

the Panel deems applicable, without the benefit of any response from Respondent.

## RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

## PARTIES' CONTENTIONS

### A. Complainant

Complainant contends as follows:

Complainant, Huawei Technologies Co. Ltd. manufactures and distributes telecommunications technologies and is the third largest smartphone producer in the world.

Complainant has rights in the HUAWEI mark based on registration of the mark with the United States Patent and Trademark Office (“USPTO”) and multiple other trademark agencies. (*e.g.*, Reg. No., 2,750,650, registered December 8, 2003).

Respondent’s domain name is confusingly similar to the HUAWEI mark as the domain name merely adds the descriptive word “technologies,” a hyphen, and the top-level domain “.co.”

Respondent has no rights or legitimate interests in the disputed domain name. Respondent has not been commonly known by the disputed domain name nor has Respondent been authorized to use the HUAWEI mark in any manner. Further, Respondent’s use of the domain is not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

Respondent has registered and is using the disputed domain name in bad faith. Respondent used the domain name for a website which reproduced the Complainant's website in its entirety.

The infringing website obviously passed itself off as Complainant's website, thereby causing confusion amongst the public and diverting Internet users looking for the Complainant's website.

Respondent has taken hundreds of Complainant's copyrighted images and all of its text from Complainant's own website, and reproduced them on its <huawei-technologies.co>website. Visitors are given the mistaken impression that they are dealing with a website owned and operated by Complainant due to the quality and the selection of the images and given that the same images appear on the Complainant's website.

Respondent's bad faith is evident from attempting to pass itself off as Complainant. Further, Respondent registered the disputed domain name with actual knowledge of Complainant's rights in the HUAWEI mark.

B. Respondent

Respondent failed to submit a Response in this proceeding.

## **FINDINGS**

Complainant has rights in the HUAWEI mark through its registration of such mark with the USPTO and through its other registrations worldwide.

Respondent is not affiliated with Complainant and has not been authorized to use Complainant's trademark in any capacity.

Respondent registered the at-issue domain name after Complainant acquired rights in its relevant trademark.

Respondent used the at-issue domain name to address a website designed to pose as one authorized or sponsored by Complainant. Such website infringed on the intellectual property rights of Complainant by displaying proprietary material belonging to Complainant.

## DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent 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 domain name; and
- (3) the domain name has been registered and is being used in bad faith.

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory.

*See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (FORUM

July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

### Identical and/or Confusingly Similar

The at-issue domain name is confusingly similar to a trademark in which Complainant has rights.

Complainant's registration of the HUAWEI mark with the USPTO and elsewhere is sufficient to demonstrate Complainant's rights in such mark under the POLICY. It is irrelevant that Respondent may operate outside of the trademark registrar's jurisdiction. *See W.W. Grainger, Inc. v. Above.com Domain Privacy*, FA 1334458 (FORUM Aug. 24, 2010) (stating that "the Panel finds that USPTO registration is sufficient to establish these [Policy ¶ 4(a)(i)] rights even when Respondent lives or operates in a different country."); *see also, Honeywell Int'l Inc. v. r9.net*, FA 445594 (FORUM May 23, 2005) (finding the complainant's numerous registrations for its HONEYWELL mark throughout the world sufficient to establish the complainant's rights in the mark under the Policy ¶ 4(a)(i)).

The at-issue <huawei-technologies.co> domain name contains Complainant's entire HUAWEI trademark followed by a hyphen and the generic term "technologies". Respondent's at-issue domain name ends with the top level domain name ".co". However, the differences between Respondent's domain name and Complainant's HUAWEI mark are insufficient to differentiate one from the other for the purposes of the Policy. Indeed the inclusion of "technologies" in the domain name is suggestive of Complainant's technology based business. Therefore, the Panel finds that the <huawei-technologies.co> domain name is confusingly similar to Complainant's HUAWEI trademark under Policy ¶ 4(a)(i).

*See Chernow Commc'ns, Inc. v. Kimball*, D2000-0119 (WIPO May 18, 2000) (holding “that the use or absence of punctuation marks, such as hyphens, does not alter the fact that a name is identical to a mark”); *see also, Am. Online, Inc. v. Karandish*, FA 563833 (FORUM Nov. 2, 2005) (finding that the addition of the descriptive term “talk” to a registered mark does not sufficiently distinguish a domain name under Policy ¶ 4(a)(i)); *see also, ER Marks, Inc. and QVC, Inc. v. Stefan Hansmann*, FA 1381755 (FORUM May 6, 2011) (“Neither the addition of country code top-level domains, i.e., ‘.co.’ ‘.de,’ ‘.cr,’ ‘.es,’ nor the insertion of a gTLD has a distinctive function”);

### **Rights or Legitimate Interests**

Under Policy ¶ 4(a)(ii), Complainant must first make out a *prima facie* case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests. *See Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Forum Aug. 18, 2006).

Respondent lacks both rights and legitimate interests in respect of the at-issue domain name. Respondent is not authorized to use Complainant’s trademark in any capacity and as discussed below, there are no Policy ¶ 4(c) circumstances from which the Panel might find that Respondent has rights or interests in respect of the at-issue domain name.

WHOIS information for the at-issue domain name lists “Paul Wilson” as the domain name’s registrant and there is nothing in the record that otherwise suggests Respondent is commonly known by the <huawei-technologies.co> domain name. Therefore, the Panel finds that Respondent is not commonly known by the at-issue domain name pursuant to Policy ¶ 4(c)(ii). *See Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known

by the mark and never applied for a license or permission from the complainant to use the trademarked name).

Respondent's domain name was registered and used so that Respondent might inappropriately capitalize on the goodwill in Complainant's trademark by posing as Complainant. Using the confusingly similar domain name in this manner demonstrates neither a *bona fide* offering of goods or services under Policy ¶ 4(c)(i), nor a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii). *See Church Mutual Insurance Company v. Paul Looney*, FA 1668317 (FORUM May 17, 2016) ("Respondent is making neither a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the <churchmutual.com> domain name. Respondent registered and uses the disputed domain name and an associated email account to impersonate Complainant ...").

Given the forgoing, Complainant satisfies its initial burden under Policy ¶ 4(a)(ii) and conclusively demonstrates Respondent's lack of rights and lack of interests in respect of the at-issue domain name.

#### **Registration and Use in Bad Faith**

Respondent's domain name was registered and used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

While Complainant does not make any express contentions that fall within the articulated provisions of Policy ¶ 4(b), these provisions are meant to be merely illustrative of bad faith; Respondent's bad faith may thus be demonstrated by allegations considered in light of other circumstances indicative of Respondent's bad faith. *See Digi Int'l Inc. v. DDI Sys.*, FA 124506 (Nat. Arb. Forum Oct. 24, 2002) (determining that Policy ¶ 4(b) sets forth certain circumstances, without limitation, that shall be evidence of registration and use of a domain name in bad faith). As mentioned above regarding rights and interests, Respondent used the

at-issue domain name to pose as Complainant by having the domain name resolve to a website containing content lifted from materials generated and owned by Complainant. Respondent's attempt to pass itself off as Complainant demonstrates Respondent's bad faith registration and use of the <huawei-technologies.co> domain name. *See DaimlerChrysler Corp. v. Bargman*, D2000-0222 (WIPO May 29, 2000) (finding that the respondent's use of the title "Dodgeviper.com Official Home Page" gave consumers the impression that the complainant endorsed and sponsored the respondent's website). Moreover, Respondent's unauthorized use of Complainant's proprietary intellectual property on its website in itself suggests Respondent's bad faith registration and use of the at-issue domain name.

Additionally, it is axiomatic that Respondent registered the <huawei-technologies.co> domain name knowing that Complainant had trademark rights in the HUAWEI trademark. Respondent's prior knowledge is evident because of the notoriety of Complainant's trademark as well as Respondent's use of Complainant's trademark and other material on the <huawei-technologies.co> website. Given the forgoing, it is clear that Respondent intentionally registered the at-issue domain name to improperly exploit its trademark value, rather than for some benign reason. Respondent's prior knowledge of Complainant's HUAWEI trademark further indicates that Respondent registered and used the <huawei-technologies.co> domain name in bad faith under Policy ¶ 4(a)(iii). *See Minicards Vennootschap Onder Firma Amsterdam v. Moscow Studios*, FA 1031703 (Nat. Arb. Forum Sept. 5, 2007) (holding that respondent registered a domain name in bad faith under Policy ¶ 4(a)(iii) after concluding that respondent had "actual knowledge of Complainant's mark when registering the disputed domain name").

## DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <huawei-technologies.co> domain name be **TRANSFERRED** from Respondent to Complainant.



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Paul Michael DeCicco, Esq.  
Arbitrator

Paul M. DeCicco, Panelist  
Dated: November 13, 2016