

DISPUTE RESOLUTION SERVICE

D00018413

Decision of Independent Expert

The Travelers Indemnity Company

and

primero tech

1. The Parties:

Complainant: The Travelers Indemnity Company
One Tower Square
Hartford
CT
06183
United States

Respondent: primero tech
85 via Spritu
San Clemante
California
92980
United States

2. The Domain Name:

travellers-insurance.co.uk

3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of such

a nature as to call in to question my independence in the eyes of one or both of the parties.

20 January 2017	Dispute received
24 January 2017	Complaint validated
24 January 2017	Notification of Complaint sent to parties
24 January 2017	Response received
24 January 2017	Notification of Response sent to parties
27 January 2017	Reply reminder sent
02 February 2017	No Reply received
02 February 2017	Mediator appointed
07 February 2017	Mediation started
01 March 2017	Mediation failed
01 March 2017	Close of mediation documents sent
06 March 2017	Expert decision payment received

4. Factual Background

The Complainant is a member of the Travelers group of companies, an international property and liability insurance organization providing a variety of insurance related products and services under the TRAVELERS mark. The group has approximately 30,000 employees and 13,000 independent agents and brokers and conducts business in numerous jurisdictions. Revenue from services offered under the TRAVELERS mark have been substantial and in 2015, was approximately US\$26.8 billion.

The Complainant invests significant resources (tens of millions of dollars a year in recent years) to extensively advertise and promote its TRAVELERS mark and the services and products offered thereunder. For example, it has promoted the TRAVELERS mark via online advertising, national and regional print periodicals, television advertising and in other high-visibility advertising spaces such as airports, and professional and college sports venues.

The Complainant owns the TRAVELERS trade mark and trade name. The Complainant and its affiliated entities and/or predecessors have used the TRAVELERS mark continuously since as early as 1865. It owns numerous trademark registrations, including U.S. Registration No. 1,611,053 for TRAVELERS (filed on 29 June 1988 and issued on 28 August 1990) and United Kingdom Registration No. UK 2481284 for TRAVELERS and Design mark (filed on 3 March 2008 and issued on 19 August 2011).

As a result of the continuous and extensive use and promotion of the TRAVELERS mark for more than 150 years, the public widely recognizes and associates the TRAVELERS mark with the Complainant and its services and products, and the Complainant enjoys substantial and valuable goodwill in the TRAVELERS mark.

The Complainant established its online presence over twenty years ago, registering the domain name <travelers.com> on 24 February 1996, <travelers.co.uk> on 17 April 2003, as well as others incorporating the TRAVELERS mark, including <travelersinsurance.com> and <travelersinsurance.co.uk>.

The Respondent registered the domain name in dispute <travellers-insurance.co.uk> (the Domain Name) on 22 December, 2016. Not much is known about the Respondent. It has submitted the briefest of Responses but the Complainant suggests it is a software development company located in California.

5. Parties' Contentions

Complainant

The following is a summary of the key contentions of the Complainant.

Rights

In addition to its trade mark registrations, the Complainant has common law rights in the TRAVELERS mark through its substantial and continuous use of the mark since at least as early as 1865.

The TRAVELERS mark is famous and has been for many years.

Similarity

The Domain Name is nearly identical to the Complainant's TRAVELERS mark - it wholly incorporates a confusingly similar spelling variation (an additional 'l' - the preferred spelling of the word 'travelers' in British English), and adds the descriptive term, 'insurance' which is a clear reference to the type of products or services offered by the Complainant.

Moreover, the Domain Name is nearly identical to the Complainant's own domain names, including <travelersinsurance.co.uk>.

The mere addition of a generic or descriptive term does not distinguish the Domain Name sufficiently from the Complainant's mark so as to eliminate confusion. It in fact increases similarity given that 'insurance' is descriptive of the Complainant's business.

The top-level domain name is not relevant in analysing similarity.

In summary, the Complainant has Rights in respect of a mark, which is identical or similar to the Domain Name for the purposes of paragraph 2.1.1 of the Policy.

Abusive Registration

The Respondent is using a confusingly similar variation of the Complainant's TRAVELERS mark without authority, to attract the Complainant's current and prospective customers and create the mistaken impression that its website and/or its products and services are associated with or affiliated with the Complainant.

Given that the Complainant is a recognized leader in the insurance industry, having more than 150 years of experience in the insurance field, its TRAVELERS mark immediately creates an association in the consumer's mind between the trade mark and the goods and services for which the Complainant has become recognized.

It is highly unlikely that the Respondent was not aware of the Complainant and its business at the time of registering the Domain Name. The source code of the website to which the Domain Name resolves, shows that meta keywords include: 'travelers insurance', 'auto insurance', 'travelers' and 'travelers companies'.

By its registration, the Respondent is attempting to attract customers for commercial gain, by creating a likelihood of confusion with the Complainant's famous TRAVELERS mark as to the source, sponsorship, affiliation, endorsement of the Respondent's website. An Internet user seeking to reach the Complainant's website will likely search for domain names incorporating the TRAVELERS mark (or variation thereof) and terms descriptive of the products and services the Complainant offers, particularly 'insurance'.

The Respondent's behaviour also amounts to typo-squatting - the Respondent acquired the Domain Name with the expectation that typographical mistakes (such as the addition of an extra letter 'l' appearing in the Domain Name) will result in website traffic being diverted away from the Complainant's legitimate websites.

The Respondent is using the Domain Name to provide or attempt to provide insurance offerings in direct competition with the Complainant. The home page of the website to which the Domain Name resolves, prominently displays a logo of an automobile with an open blue umbrella over it, with the phrase 'TRAVELERS INSURANCE' underneath. The Complainant owns the famous umbrella mark and has numerous trade mark registrations in respect thereof. The umbrella mark has been used in connection with the Complainant's insurance business for many years.

Although the Domain Name uses the British English spelling of 'travellers' (two 'l's), the Respondent's website uses both spellings.

The Respondent's website provides several links relating to insurance, including, for example, 'Travellers Insurance', 'Travelers Insurance', 'Insurance Companies', 'Insurance Go', 'Travelers Auto Insurance', and 'Travelers Home Insurance', although none appear to be functional.

The Respondent's actions are unfairly detrimental to the Complainant's reputation and unfairly disruptive of the Complainant's business. For instance, potential customers seeking the Complainant's products and services may be directed to the Respondent's website, believing it to be the Complainant's own website. Upon reaching the Respondent's website and being invited to obtain a quote, consumers will realise that the quote tool is inoperative. Consumers are likely to become frustrated and form a negative perception about the perceived owner of the website i.e. the Complainant. Consumers may also believe that the Complainant's products and services are not available to them.

The Complainant has not licensed or authorised the Respondent to use its TRAVELERS mark, or to register a domain name incorporating any variations thereof.

The Respondent has no affiliation with the Complainant.

The Respondent has no rights or legitimate interest in the Domain Name. It is not commonly known by the Domain Name which is used solely to divert Internet customers away from the Complainant.

The Domain Name is nearly identical to the Complainant's TRAVELERS mark which has a strong reputation and the Respondent has no reasonable justification for having registered the Domain Name. Accordingly, registration and use of the Domain Name can only be seen as an attempt to unfairly benefit from the extensive goodwill and outstanding reputation the Complainant has developed in the industry, by creating confusion between the Complainant's trade mark and website.

In summary, the Domain Name in the hands of the Respondent is an Abusive Registration.

Respondent

The following is a verbatim record of the Response filed by the Respondent.

'Subject: Response

*what is the reason for sending us this email.
travellers-insurance.co.uk domain is owned by us and if someone want to buy it, they can make offer for it.'*

6. Discussions and Findings

The Policy (Version 4)

For a Complaint to succeed under the Policy, a Complainant is required to prove, on a balance of probabilities, that it has rights in respect of a name or mark which is

identical or similar to the domain name in issue and that the domain name in the hands of the Respondent is an Abusive Registration. Both elements are required.

Complainant's 'Rights'

The meaning of 'Rights' is defined in the Policy as '*... rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning*'.

It is clear that the Complainant enjoys both registered and unregistered rights in the TRAVELERS mark.

The Domain Name encapsulates the Complainant's TRAVELERS trade mark but adds an additional 'l', so that in the Domain Name the mark appears as 'travellers'. This is the British spelling of the noun, 'traveller', the U.S. spelling having just one 'l'. The word 'travellers' is followed by the generic or descriptive term 'insurance' and the two words are separated by a hyphen. The word 'travellers' is the first and dominant element of the Domain Name. Ignoring the suffix '.co.uk' as Experts are permitted to do when carrying out a comparison, the Complainant's mark and Domain Name are similar.

The Expert is satisfied that the Complainant has Rights in a name or mark that is similar to the Domain Name and must now therefore consider whether the Domain Name is an Abusive Registration in the hands of the Respondent.

Abusive Registration

Paragraph 1 of the Policy defines Abusive Registration as a domain name which was either '*registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights*' or which '*is being or has been used in a manner which has taken unfair advantage of or was unfairly detrimental to the Complainant's Rights*';.

A non-exhaustive list of factors which may indicate that a domain name is an Abusive Registration is set out in paragraph 5 of the Policy. Such factors include circumstances indicating that the Respondent has registered or otherwise acquired the domain name *primarily* as a blocking registration against a name or mark in which the Complainant has rights, or for the purpose of unfairly disrupting the business of the Complainant.

Other factors suggesting an Abusive Registration include the Respondent using or threatening to use the domain name in a way which has confused or is likely to confuse people or businesses into believing that the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant.

A non-exhaustive list of countervailing factors is set out in paragraph 8 of the Policy. This paragraph contains a useful guide as to circumstances which might indicate that the domain name is not an Abusive Registration, for instance where the Respondent, before being aware of the Complainant's cause for complaint, was using or had made demonstrable preparations to use the domain name or one that is similar in connection with a genuine offering of goods or services, or where a Respondent has been commonly known by a name or legitimately connected with a mark which is identical or similar to the domain name, or has made legitimate non-commercial or fair use of the domain name.

Discussion

There can be little doubt that a domain name which incorporates a famous trade mark, albeit with a minor variation in spelling (which does little to distinguish its visual appearance from the trade mark to which it is similar), and which combines that slightly varied trade mark with a generic or descriptive term which is indicative of the trade mark owner's business, will cause confusion as to the identity of the entity behind the Domain Name.

It is clear from the use to which the Domain Name has been put, i.e. a route to an insurance focused website containing several (albeit inoperative) links to what on the face of it are (or would be) other insurance focused sites, which uses both forms of spelling of the word/mark in question ('travellers'/'travelers') as well as insurance related meta-data and an umbrella logo at least similar to the Complainant's umbrella logo, that the Respondent knew of the Complainant, its products and services and its mark(s) associated therewith, and sought to take an unfair advantage.

It is also clear that an Internet user ending up at the Respondent's website is likely to become frustrated because he will be unable to transact any business or enquiry thereon. If the Internet user remains confused as to the true owner of the website, thinking it is or may be the Complainant, or even if he realises it is not a website of the Complainant once he arrives there (having thought it might be initially), it is likely going to reflect poorly on the Complainant and be detrimental to it. This cannot be a fair use of the Domain Name.

The Respondent has not come forward with any sensible answer to the Complaint. Its mere ownership of the Domain Name cannot of course create rights for the purposes of defending proceedings under the Policy. The absence of any substantive Response is perhaps not surprising given that in all the circumstances, there would appear to be very little that the Respondent could say in answer to the Complaint. Indeed, it seems likely that the very purpose of registration of the Domain Name was to mislead Internet users into believing that the Domain Name was connected with the Complainant. In these circumstances, the Respondent's use of the Domain Name could not possibly amount to a genuine offering of goods or services, or legitimate, non-commercial or fair. The Respondent is not known by a name or legitimately connected with a mark which is identical or similar to the Domain Name

and in these circumstances, the Expert can only conclude that this was and is an Abusive Registration.

7. Decision

The Expert finds that the Complainant has Rights in a name or mark that is similar to the Domain Name and is satisfied on the evidence before him that the Domain Name in the hands of the Respondent is an Abusive Registration. Accordingly, the Expert directs that the Domain Name, <travellers-insurance.co.uk> be transferred to the Complainant.

Signed:
Jon Lang

Dated: 21 March 2017