

ADMINISTRATIVE PANEL DECISION

Itar-Tass v. Igor Litinsky

Case No. D2014-0329

1. The Parties

The Complainant is Itar-Tass of Moscow, Russian Federation, represented by Internet & Law, Russian Federation.

The Respondent is Igor Litinsky of Austin, Texas, United States of America (“US”).

2. The Domain Names and Registrars

The disputed domain names <business-tass.com> and <itartass.net> are registered with GoDaddy.com, LLC. The disputed domain name <etass.com> is registered with NameScout Corp.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 5, 2014. On March 5, 2014, the Center transmitted by email to GoDaddy.com, LLC. and NameScout Corp. (the “Registrars”) a request for registrar verification in connection with the disputed domain names. On March 5, 2014 and March 7, 2014, the Registrars transmitted by email to the Center their verification responses 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 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 17, 2014. In accordance with the Rules, paragraph 5(a), the due date for Response was April 6, 2014. The Respondent did not submit any Response. Accordingly, the Center notified the Respondent’s default on April 7, 2014.

The Center appointed Sebastian M.W. Hughes, Gabriela Kennedy and Peter L. Michaelson as Panelists in this matter on May 2, 2014. The Panel finds that it was properly constituted. Each member of 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

A. Complainant

The Complainant is a company incorporated in Moscow in the Russian Federation and the owner of several registrations in the Russian Federation for the trade marks TASS, ITAR and ITAR TASS and their Cyrillic equivalents TACC, ИТАР and ИТАР ТАСС (the "Trade Marks"). The Complainant's rights in the Trade Marks precede the Respondent's registration of the disputed domain names by many years.

B. Respondent

The Respondent appears to be an individual based in the US.

C. The Disputed Domain Names

The disputed domain names were registered on the following dates:

<business-tass.com>	November 14, 2005
<itartass.net>	November 14, 2005
<etass.com>	April 20, 2008

D. The Websites at the Disputed Domain Names

The evidence submitted by the Complainant shows that the disputed domain name <business-tass.com> used to resolve to a page displaying a "Coming Soon" message and advertisement from the Registrar and the disputed domain name <itartass.net> to a page displaying a simple picture and a fictitious search box as alleged by the Complainant. Given this description, it is possible to say that the disputed domain names <business-tass.com> and <itartass.net> have been passively held by the Respondent.

The evidence submitted by the Complainant shows that the disputed domain name <etass.com> used to resolve to a parking page with sponsored links (the "Website").

5. Parties' Contentions

A. Complainant

The Complainant made the following submissions in the Complaint.

The Complainant was established in 1925 as the central information agency of the Soviet Union under the name "Telegraph Agency of the Union of Soviet Socialist Republics (TASS)". In 1994, when the Soviet Union ceased to exist, the Complainant changed its name to "Information Telegraph Agency of Russia (ITAR TASS)".

Both TASS and ITAR TASS are internationally recognised marks, used by the Complainant in respect of the provision of news and information to domestic and foreign mass media, including the provision of such services online.

The disputed domain names are confusingly similar to the Trade Marks as they incorporate one or more of the Trade Marks in their entirety, together with, in the case of the disputed domain name <etass.com>, the non-distinctive and generic prefix "e" (meaning "electronic commerce") and, in the case of the disputed domain name <business-tass.com>, the non-distinctive and generic word "business".

The Respondent has no rights or legitimate interests in the disputed domain names. The Respondent is not affiliated with or authorised by the Complainant and is not commonly known by the disputed domain names. The Respondent is not using the disputed domain names in respect of a *bona fide* offering of goods or services.

The disputed domain names have been registered and used in bad faith.

The Respondent appears to be a Russian speaker and must have known of the Trade Marks at the time the disputed domain names were registered.

The Respondent has used the disputed domain name <etass.com> in respect of the Website to intentionally attract consumers for commercial gain.

On January 21, 2014 the Complainant obtained an order in proceedings against the Respondent in the Commercial Court of Moscow restraining the Respondent from using the domain names <etass.ru>, <i-tass.ru>, <itass.ru>, <info-tass.ru>, <infotass.ru>, <photo-tass.ru>, <arms-tass.ru>, <armstass.ru>, <business-tass.ru>, <businessstass.ru>, <digital-tass.ru> and <tasstv.ru>, registered by the Respondent without the Complainant's authorisation (the "Moscow Proceedings").

B. Respondent

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

6. Discussion and Findings

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Marks acquired through use and registration which predate the date of registration of the disputed domain names by many years.

UDRP panels have consistently held that domain names are generally identical or confusingly similar to a trade mark for purposes of the Policy "when the domain name includes the trade mark, or a confusingly similar approximation, regardless of the other terms in the domain name" (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662).

The disputed domain name <itartass.net> is identical to the Trade Marks ITAR TASS/ITAP TACC. The disputed domain names <etass.com> and <business-tass.com> contain the Trade Marks TASS/TACC in their entirety. The Panel finds that the addition of the non-distinctive prefix "e" and the non-distinctive word "business" to the disputed domain names <etass.com> and <business-tass.com> does not serve to distinguish those disputed domain names from the Trade Marks in any significant way.

The Panel finds that the disputed domain names are confusingly similar to the Trade Marks.

The Panel therefore holds that the Complaint fulfills the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection

with a bona fide offering of goods or services; or

- (ii) the respondent (as an individual, business, or other organisation) has been commonly known by the domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

There is no evidence that the Complainant has authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Marks. The Complainant has prior rights in the Trade Marks which precede the Respondent's registration of the disputed domain names by many years. There is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption (*Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

The Respondent has failed to show that it has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services.

The disputed domain name <etass.com> has been used in respect of the Website, to generate pay-per-click revenue for the Respondent. Such use does not give rise to any rights or legitimate interests in the disputed domain name <etass.com>. The passive holding of the disputed domain names <itartass.net> and <business-tass.com> cannot give rise to any rights or legitimate interests in those disputed domain names.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names.

There has been no evidence adduced to show that the Respondent is making any legitimate noncommercial or fair use of the disputed domain names.

The Panel finds that the Respondent has failed to produce any evidence to establish rights or legitimate interests in the disputed domain names. The Panel therefore finds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(b)(iv) of the Policy, the following conduct amounts to registration and use in bad faith on the part of a respondent:

By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Panel finds that the use by the Respondent of the disputed domain name <etass.com> to generate pay-per-click revenue via sponsored links on the Website amounts to bad faith registration and use of that disputed domain name, under paragraph 4(b)(iv) of the Policy.

It is well-established that passive holding of a disputed domain name can, in certain circumstances, amount to evidence of bad faith. In all the circumstances of this case, given in particular the Complainant's longstanding rights in the Trade Marks, the conduct of the Respondent in apparently registering numerous other domain names comprising the Trade Marks, including those the subject of the Moscow Proceedings, the bad faith registration and use of the disputed domain name <etass.com>, and the failure of the

Respondent to file a Response to allege any possible good faith use, the Panel finds that the disputed domain names <itartass.net> and <business-tass.com> have been registered and used in bad faith.

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered and are being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 names <business-tass.com>, <itartass.net> and <etass.com> be transferred to the Complainant.

Sebastian M.W. Hughes
Presiding Panelist

Gabriela Kennedy
Panelist

Peter L. Michaelson
Panelist
Date: May 16, 2014