

DISPUTE RESOLUTION SERVICE

D00016919

Decision of Independent Expert

Yahoo! Inc.

and

Rajveer Singh Chawla

1. The Parties:

Lead Complainant: Yahoo! Inc.
701 First Avenue
Sunnyvale
Santa Clara
94089
United States

Respondent: Rajveer Singh Chawla
028, Vinayak Mahagun Puram
NH - 24
GZB
Uttar Pradesh
201010
India

2. The Domain Name(s):

yahoosupportcontact.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 which could arise in the foreseeable future, that need be disclosed as they might be of such a nature as to call into question my independence in the eyes of one or both of the parties.

06 January 2016 14:44 Dispute received
07 January 2016 09:24 Complaint validated
07 January 2016 09:26 Notification of complaint sent to parties
26 January 2016 01:30 Response reminder sent
29 January 2016 11:22 No Response Received
29 January 2016 11:22 Notification of no response sent to parties
03 February 2016 09:24 Expert decision payment received

4. Factual Background

The Complainant is a US company incorporated in Delaware, with its registered office in California, and offices throughout the Americas, Asia Pacific, Europe, Middle East and Africa. It describes itself in its Complaint as a “guide focussed on making users’ digital habits inspiring and entertaining”, creating highly personalized experiences for users, at the same time creating value for advertisers by connecting them with audiences that build their business.

The Domain Name was registered on 24 August 2015. The Respondent is an individual, from the Uttar Pradesh region of India. The Domain Name links to a site which is headed with “Yahoo Technical Support Phone Number UK 0800-***-****” [full number supplied, but omitted here], with a Navigation bar including “Yahoo Customer Service”.

5. Parties’ Contentions

The Complainant

Rights

The YAHOO! Mark has been in continuous use since at least 1994 and has been continuously ranked as one of the most trusted, powerful and valuable global brands since at least 2007. The Complainant’s main site is located at yahoo.com, but it directly or indirectly operates many other sites incorporating that mark, including sites specific to particular countries, regions and/or languages.

The Complainant owns at least ten European Community trade mark registrations for YAHOO! word and design marks, in at least 45 classes, all of which were issued prior to the registration of the Domain Name.

The Domain Name incorporates all of the Complainant’s mark, combined with terms highly related to its customer services, and the distinctive component of the Domain Name is the string of characters “YAHOO”. The remainder of the Domain Name is merely descriptive or generic, and the exclamation mark in the trade mark

cannot technically be included in a domain name. The Domain Name is therefore similar to the Complainant's trade mark.

Abusive Registration

The Complainant relies upon three heads indicative of abusive behaviour in the Policy:

- The Respondent has registered or otherwise acquired the Domain Name for the purposes of unfairly disrupting its business (para 3.a.i.C)
- The Respondent is using 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 authorized by, or otherwise connected with it (para 3.a.ii); and
- The Respondent is engaged in a pattern of registering domain names corresponding to well-known names or trade marks in which he has no apparent rights, and the Domain Name is part of that pattern (para 3.a.iii).

The Complainant highlights the references on the YAHOO SUPPORT CONTACT site to which the Domain Name points, to Yahoo Technical Support, BT Yahoo Technical Support, and the use of similar keywords, with toll-free numbers to call for technical and email support. The homepage uses a stretched .jpg image called "Yahoo-customer-support", with a number to call for support. Similar material appears on a linked Facebook page.

As to unfair disruption of its business, the Complainant says the Domain Name is used specifically to divert traffic intended for it, by deceiving Yahoo users into believing that they may obtain Yahoo! Help, through YAHOO SUPPORT CONTACT, through deceptive titles, descriptions and keyword search optimization in meta data on the site, and in the context of social media. The Complainant says that customers mistakenly contacting YAHOO SUPPORT CONTACT are encouraged to provide remote access to their computers and personal information which may compromise their personal safety. It cites an instance in the US of a customer making that mistake after using the search term "Yahoo Customer Support Phone number", and paying an amount of money to someone pretending to be a Yahoo customer support person to fix a supposed virus problem. The Complainant says the entity involved (YAHOO SUPPORT NUMBER, through the domain name yahoo-support-number.com) is likely to be under the Respondent's ownership, or management and control in the same way as YAHOO SUPPORT CONTACT, and that similar damage could result in the UK and Ireland. The false impression of a commercial connection or affiliation with Yahoo diverts traffic from legitimate free Yahoo! Help resources.

As to confusion, the Complainant has filed complaints against the registration of yahoo-support-number.com through WIPO, and through Nominet in respect of yahoophonenumber.co.uk, yahoosupport.co.uk, yahoocustomer care.co.uk, and yahoohelpnumber.co.uk, which it terms collectively the "Similar Domains". Those complaints are ongoing. In support of its claim that the Similar Domains are under the same common ownership or control as the Domain Name, the Complainant notes that the sites involved all include a defective disclaimer, which contains an unusual grammatical error ("in one way we sponsor their products or services", which should, presumably, have been "in no way do we sponsor.."), and also the

use of the same toll free number. Other parts of the disclaimer (which is neither prominent or comprehensive) are incomprehensible and full of grammatical errors. It therefore says that there is a pattern and practice of domain name registration which has caused actual confusion resulting in financial and emotional damages, and the Domain Name is being used in a way likely to confuse people, and to suggest a connection with the Complainant which does not exist.

The Complainant refers to the title, layout and design of the YAHOO SUPPORT CONTACT site, and the use of search engine optimization and social media to “spoof Yahoo’s identity”, as well as the likely use of an email address incorporating the Domain Name suggesting connection with it, given that email contact is also encouraged through the YAHOO SUPPORT CONTACT site.

The Complainant does not believe that there is any genuine product offering by the Respondent, only a fraudulent scheme to compromise users’ computers by taking remote access and deceiving users into providing personal information for their own financial gain using scare tactics, or other deceptive means spoofing Yahoo’s identity.

Finally, as to the pattern of registrations, the Complainant notes that the “exact same IP address” as for YAHOO SUPPORT CONTACT is used for mac-support247.com, yahootollfreenumber.com and yahoomailcustomersupport.com. It also relies upon the Similar Domains which are the subject of ongoing complaints to Nominet and WIPO (see above). The domain names in question all incorporate well-known third-party trade marks and the Domain Name is part of that pattern.

The Complainant seeks the transfer of the Domain Name to itself.

The Respondent

The Respondent has not responded to these proceedings.

6. Discussions and Findings

In order to succeed in its Complaint, in accordance with the Policy, the Complainant needs to establish in respect of the Domain Name) that:

- “i. The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and*
- ii. The Domain Name, in the hands of the Respondent, is an Abusive Registration.”*

The Complainant needs to establish both elements on the balance of probabilities.

The definition of Abusive Registration under the Policy is as follows:

“Abusive Registration means a Domain Name which either:

- i. was 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*

ii. has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights”.

The definition of Rights under the Policy is as follows:

“Rights means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.”

Rights

The Complainant has provided evidence of the extent of its trade mark registration and use, and is in any event clearly one of the world's best known “internet” brands. The Expert accepts the Complainant's contention that the distinctive element of the Domain Name is “YAHOO”, noting in addition that the exclamation mark is not capable of incorporation in a domain name registration. The other elements of the Domain Name (“support” and “contact”) are entirely descriptive of the services offered through the website, and are not distinctive. Therefore, the Expert accepts that the Complainant has Rights in a name or mark which is similar to the Domain Name.

Abusive Registration

The Complainant links the Domain Name and the YAHOO SUPPORT CONTACT site to other domain names (including the Similar Sites the subject of other ongoing proceedings) and to other sites, and thereby infers a pattern of conduct which includes the cited instance of confusion in the US, which was the subject of a complaint to the Consumer Protection Bureau in Illinois. However, the only domain name registered to the Respondent to these proceedings is the Domain Name itself. Other domain names appear to be registered to various other individuals with other addresses in India. The Complainant has also made a number of assertions “on information and belief” as to what would happen to users who happen upon the YAHOO SUPPORT CONTACT site, which appear largely to be by inference from the Illinois example, and the supposed fraudulent purpose behind the various sites. There does not appear to be any direct evidence of such a result from anyone contacting the YAHOO SUPPORT CONTACT site. Although noting the Complainant's concerns in this respect (and that this Complaint has not been defended), the evidence advanced by the Complainant as to the underlying fraudulent purpose of this and the other domain name registrations cited is not overwhelming. The Expert would therefore hesitate to make a ruling in the Complainant's favour which relied upon any finding that the whole scheme referred to by the Complainant is designed to defraud members of the public by gaining unauthorised access to bank account details or other personal details. There may well be a connection between the sites and domain names in question despite the difference in the identities of the registrants – the common error in the disclaimers, the use of the same IP address in many instances, and the use of the same toll free number would strongly suggest that there is such a connection. However, that of itself does not necessarily mean that the whole scheme is a fraudulent one in the terms suggested by the Complainant.

However, in the Expert's view, the Complainant does not need to go that far to succeed in its Complaint. The use of the Complainant's mark in the Domain Name, with merely descriptive additions, will inevitably be likely to lead to initial interest confusion on the part of users looking for the Complainant's support services. The content of the YAHOO SUPPORT CONTACT site itself does very little to dispel that confusion. There is a disclaimer of sorts, which refers to it being an "independent service provider", offering remote tech support for third party products, with trade marks "used as references for informational purposes only". As the Complainant has noted, however, this is far from prominent or comprehensive (and in any event confusing in parts). The most prominent parts of the site are the promotion of toll free numbers, and invitations to call or email for technical support, which is likely to be as far as many users would ever get on the site itself. It is very unlikely that users would ever get as far as the disclaimer, even if they then could understand what it meant.

Therefore, despite the lack of evidence of actual confusion on the part of users accessing this site, the Expert has no difficulty in concluding that there is a significant and real likelihood of confusion, with users making a connection between the site and the Complainant which does not exist. The Respondent has not contested the Complaint, but even if he had, it is very difficult to see that he could have put forward any remotely convincing argument to the contrary. Therefore, the Expert finds in the Complainant's favour, and concludes that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

7. Decision

The Expert finds that the Complainant has Rights in the name or mark YAHOO which is similar to the Domain Name, and that the Domain Name in the hands of the Respondent is an Abusive Registrations. The Expert therefore directs that the Domain Name be transferred to the Complainant.

Signed: Bob Elliott

Dated: 15 February 2016