



## DECISION

Charter Communications Holding Company, LLC v. Nanci Nette

Claim Number: FA1812001820262

### PARTIES

Complainant is **Charter Communications Holding Company, LLC** (“Complainant”), represented by **Madelon Lapidus of Holland & Hart LLP**, Colorado, USA. Respondent is **Nanci Nette** (“Respondent”), represented by **Ankur Raheja**, India.

### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<spectrum.tv>**, registered with **Name Connection Spot LLC**.

### PANEL

The undersigned Daniel B. Banks, Jr., Professor David E. Sorkin and David L. Kreider, certify that they have acted independently and impartially and to the best of their knowledge have no known conflict in serving as the Panelists in this proceeding.

### PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on December 10, 2018; the FORUM received payment on December 10, 2018.

On December 10, 2018, Name Connection Spot LLC confirmed by e-mail to the FORUM that the **<spectrum.tv>** domain name is registered with Name Connection Spot LLC and that Respondent is the current registrant of the name. Name

Connection Spot LLC has verified that Respondent is bound by the Name Connection Spot LLC 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 December 11, 2018, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of January 24, 2019 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@spectrum.tv. Also on December 11, 2018, 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.

A timely Response was received and determined to be complete on January 24, 2019.

An Additional Submission was filed by Complainant. Respondent objected to the consideration of Complainant's Additional Submission on the grounds that such was not in compliance with established UDRP procedure in that an Additional Submission is proper only when requested by the Panel. No such request was made herein. Accordingly, the Panel decides not to consider any Additional Submissions in this case.

On January 30, 2019, pursuant to Complainant's request to have the dispute decided by a three-member Panel, the FORUM appointed Daniel B. Banks, Jr., Professor David E. Sorkin and David L. Kreider as Panelists.

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.

## RELIEF SOUGHT

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

## PARTIES' CONTENTIONS

### A. Complainant

Complainant is a telecommunications company providing services to over 26 million customers in the United States. With 94,000 employees and service in 41 states, Complainant considers itself America's fastest growing TV, internet, and voice company. Complainant has rights in various SPECTRUM related marks, including the CHARTER SPECTRUM (Reg. No. 4,618,726, registered Oct. 7, 2014) and SPECTRUM TV (Reg. No. 5,420,855, registered Mar. 13, 2018) marks through its registration of the marks with the United States Patent and Trademark Office ("USPTO"). Respondent's <spectrum.tv> domain name is identical or confusingly similar to Complainant's SPECTRUM marks as it contains Complainant's entire mark and merely adds the ".tv" country code top-level domain ("ccTLD").

Respondent has no rights or legitimate interests in the <spectrum.tv> domain name. Respondent is not commonly known by the disputed domain name, nor has Complainant authorized, licensed, or otherwise permitted Respondent to use the mark. Respondent also does not use the disputed domain name in connection with a *bona fide* offering of goods or services or legitimate

noncommercial or fair use. Rather, Respondent is using the domain name to redirect to other websites, including pages of pay-per-click advertisements and prompts consumers to download the SecuryBrowse browser hijacker.

Respondent registered and uses the <spectrum.tv> domain name in bad faith. Respondent's use of the domain name diverts potential consumers away from Complainant's website and disrupts Complainant's business, in some instances, even directing consumers to Complainant's competitors. Further, Respondent uses the domain name in connection with malware. Additionally, Respondent had actual or constructive knowledge of Complainant's rights in the SPECTRUM family of marks.

#### B. Respondent

Respondent runs a Domain Management business since June 2012 in the name of Name Management Group and otherwise also holds a portfolio of premium domain names as a Domain Name investor. The Respondent, since 2012, has registered more than 500 generic and common-word based Domain Names for investment and development and continues to register inherently valuable domain names. The term "spectrum" is a dictionary based generic term, having the definition defined as a band of colours, as seen in a rainbow, produced by separation of the components of light by their different degrees of refraction according to wavelength." Complainant does not have exclusive rights to this generic term with many various meanings on the Internet.

Respondent does have rights and legitimate interests in the <spectrum.tv> domain name. Respondent helps clients in acquiring premium domain names and also invests in premium domain names as domain investor in generic and descriptive domain names, with a portfolio of over 500 domain names. Respondent merely selected this domain name due to its generic nature and as a brand name for numerous businesses around the world, expecting the disputed

domain name to be of interest to a potential customer having similar business name looking to establish an online presence. Further, Respondent simply operates a parked webpage with the disputed domain name, and does not specifically display any links targeting Complainant nor does it use the domain name in connection with any malicious software.

Respondent did not register the <spectrum.tv> domain name in bad faith. Respondent registered the domain name simply because of its value as a generic dictionary term, and had no knowledge of Complainant nor its mark when it registered the domain name. Respondent in no way attempted to target Complainant or its SPECTRUM mark. Rather, Respondent engages in the business of speculating on domain names, and has registered many valuable and generic domain names to further this legitimate business. Further, the domain name has just been parked with a parking service, which shows some advertisement categories but not direct advertisements to Complainant nor competing services. In no way does Respondent use the domain name to distribute any malware and even verified with the parking service that no such malware distribution ever occurred.

The Panel notes that Respondent registered the <spectrum.tv> domain name on July 12, 2018.

## **FINDINGS**

- 1 - The disputed domain name is confusingly similar to a trademark in which the Complainant has rights.
- 2 - The Respondent has no rights or legitimate interests in respect of the domain name.

3 - The disputed domain name has been registered and is being used in bad faith.

## 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.

### Identical and/or Confusingly Similar

Complainant claims rights in various SPECTRUM related marks, including the CHARTER SPECTRUM (Reg. No. 4,618,726, registered Oct. 7, 2014) and SPECTRUM TV (Reg. No. 5,420,855, registered Mar. 13, 2018) marks through its registration of the marks with the USPTO. Registration of a mark with the USPTO sufficiently confers a complainant's rights in a mark for the purposes of Policy ¶ 4(a)(i). *See Humor Rainbow, Inc. v. James Lee*, FA 1626154 (FORUM Aug. 11, 2015) (stating, "There exists an overwhelming consensus amongst UDRP panels that USPTO registrations are sufficient in demonstrating a complainant's rights under Policy ¶ 4(a)(i) and its vested interests in a mark. . . . Due to Complainant's attached USPTO registration on the principal register, the Panel agrees that it has sufficiently demonstrated its rights per Policy ¶ 4(a)(i).").

Accordingly, the Panel finds that Complainant has established rights in the CHARTER SPECTRUM and SPECTRUM TV marks for the purposes of Policy ¶ 4(a)(i).

Complainant next argues that Respondent's <pectrum.tv> domain name is identical or confusingly similar to Complainant's marks as it contains the entire SPECTRUM mark and merely adds the ".tv" ccTLD. Similar changes in a registered mark, including omitting a word and adding a ccTLD, have failed to sufficiently distinguish a domain name for the purposes of Policy ¶ 4(a)(i). *See VNY Model Management, Inc. v. Lisa Katz / Domain Protection LLC*, FA 1625115 (FORUM Aug. 17, 2015) (finding that Respondent's <vnymodels.com> domain name is confusingly similar to the VNY MODEL MANAGEMENT mark under Policy ¶ 4(a)(i).); *see also Blue Cross and Blue Shield Association v. Shi Lei aka Shilei*, FA 1784643 (FORUM June 18, 2018) ("A TLD (whether a gTLD, sTLD or ccTLD) is disregarded under a Policy ¶4(a)(i) analysis because domain name syntax requires TLDs."). Complainant has numerous registered marks all containing the same scheme (SPECTRUM and another term), and the domain name here contains the SPECTRUM portion of the marks and the ".tv" ccTLD.

The panel also considers cases under UDRP in which the TLD plays a vital role. When the TLD ".tv" is added to the disputed name "SPECTRUM", the Complainant's trademark appears. *See Mr. Green Ltd. v. Alfred Zeiselberger, Mediapool Communications Ltd.*, WIPO case No. D2017-1944, wherein the panel stated: "*In these circumstances, the Panel will compare the Complainant's trademark MR GREEN to the entirety of the disputed domain name <mr.green> in the assessment of confusingly similarity. In doing so, the Panel finds that the Complainant's mark is readily identifiable in the disputed domain name, taken as a whole. It should be noted that the disputed domain is alphanumerically identical to the trademark with the exception of the addition of the dot which does*

*nothing in the Panel's view to distinguish the mark from the disputed domain name. In the Panel's view, this leads to a finding of confusingly similarity."*

The Panel finds that the <spectrum.tv> domain name is confusingly similar to the SPECTRUM portion of Complainant's marks under Policy ¶ 4(a)(i).

While Respondent contends that the <spectrum.tv> domain name is comprised of a common and generic term and as such cannot be found to be identical or confusingly similar to Complainant's mark, the Panel finds that such a determination is not necessary under Policy ¶ 4(a)(i) as this portion of the Policy considers only whether Complainant has rights in the mark and whether the disputed domain name is identical or confusingly similar to Complainant's mark. *See Precious Puppies of Florida, Inc. v. kc*, FA 1028247 (FORUM Aug. 10, 2007) (examining Respondent's generic terms arguments only under Policy ¶ 4(a)(ii) and Policy ¶ 4(a)(iii) and not under Policy ¶ 4(a)(i)); *see also Vitello v. Castello*, FA 159460 (FORUM July 1, 2003) (finding that the respondent's disputed domain name was identical to complainant's mark under Policy ¶ 4(a)(i), but later determining the issue of whether the disputed domain name was comprised of generic terms under Policy ¶¶ 4(a)(ii) and 4(a)(iii)).

### **Rights or Legitimate Interests**

The Panel finds that Complainant has made a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii). The burden then shifts to Respondent to show it does have rights or legitimate interests. *See Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its *prima facie* case and satisfy Policy ¶ 4(a)(ii)); *see also Neal & Massey Holdings Limited v. Gregory Ricks*, FA 1549327 (FORUM Apr. 12, 2014) ("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”).

Complainant contends that Respondent has no rights or legitimate interests in the <spectrum.tv> domain name. Relevant information includes the WHOIS and any other assertions by a complainant regarding the nature of its relationship with a respondent. *See Braun Corp. v. Loney*, FA 699652 (FORUM July 7, 2006) (concluding that the respondent was not commonly known by the disputed domain names where the WHOIS information, as well as all other information in the record, gave no indication that the respondent was commonly known by the domain names, and the complainant had not authorized the respondent to register a domain name containing its registered mark). The WHOIS identifies “Nanci Nette” as the registrant. Complainant asserts that no evidence exists to show that Respondent has ever been legitimately known by the SPECTRUM family of marks. Panels may use these assertions as evidence of lacking rights or legitimate interests. *See Navistar International Corporation v. N Rahmany*, FA1505001620789 (FORUM June 8, 2015) (finding that the respondent was not commonly known by the disputed domain name where the complainant had never authorized the respondent to incorporate its NAVISTAR mark in any domain name registration). Complainant alleges that Respondent has never been legitimately affiliated with Complainant, has never been known by the domain name prior to its registration, and Complainant has not given Respondent permission to use the mark in any manner. As such, the Panel finds that Respondent is not commonly known by the <spectrum.tv> domain name under Policy ¶ 4(c)(ii).

Next, Complainant claims that Respondent is using the <spectrum.tv> domain name to redirect to other websites, including pages of pay-per-click advertisements and prompts to download the SecuryBrowse browser hijacker. Using a domain name to either offer links to services in direct competition with a

complainant or to distribute malware generally does not amount to any *bona fide* offering of goods or services or a legitimate noncommercial or fair use. *See The Toronto-Dominion Bank v. GEORGE WASHERE*, FA 1785311 (FORUM June 7, 2018) (“Respondent’s confusingly similar <esecuretdbank.com> domain name references a website displaying links to competing third parties as well as links to Complainant and various unrelated third parties. Using the domain name in this manner shows 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 also Coachella Music Festival, LLC v. Carolina Rodrigues / Fundacion Comercio Electronico*, FA 1785199 (FORUM June 5, 2018) (“Respondent uses the <coechella.com> domain name to direct internet users to a website which is used to attempt to install malware on visiting devices. Using the domain name in this manner is neither a *bona fide* offering of goods or services under Policy ¶4(c)(i), nor a non-commercial or fair use under Policy ¶4(c)(iii).”). Complainant provides a screenshot of the resolving webpage, which allegedly redirects users to various webpages, including one which prompts users to install a SecurityBrowse browser hijacker extension and another which contains links such as “Spectrum Cable” and “Cable Bundle.” Complainant also provides an article pertaining to the installation and/or removal of a SecurityBrowse browser extension. Accordingly, the Panel finds that Respondent uses the domain name to offer competing hyperlinks and/or malware when performing its rights and legitimate interests analysis under Policy ¶¶ 4(c)(i) or (iii).

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

Complainant claims that Respondent’s use of the domain name diverts potential consumers away from Complainant’s website and disrupts Complainant’s business, in some instances, even directing consumers to Complainant’s competitors. Using a disputed domain name that disrupts a complainant’s business and trades upon the goodwill of a complainant for commercial gain can evince bad faith under Policy ¶¶ 4(b)(iii) & (iv). *See Transamerica Corporation v.*

*Carolina Rodrigues / Fundacion Comercio Electronico*, FA 1798316 (FORUM Aug. 20, 2018) (“Respondent’s use of the domain name to link to competitors of Complainant, presumably generating pay-per-click or referral fees for Respondent, is indicative of bad faith under paragraphs 4(b)(iii) and 4(b)(iv).”). As noted above, Complainant provides a screenshot of one of the resolving webpages, which contains links such as “Spectrum Cable” and “Cable Bundle.” Accordingly, the Panel finds that Respondent disrupts Complainant’s business and attempted to commercially benefit off Complainant’s mark in bad faith under Policy ¶¶ 4(b)(iii) & (iv).

Next, Complainant avers that Respondent uses the domain name in connection with malware. Using a domain name to install malware onto a users’ computer can show bad faith under Policy ¶ 4(a)(iii). *See Asbury Communities, Inc. v. Tiffany Hedges*, FA 1785054 (FORUM June 18, 2018) (“The Panel here finds that Respondent [installation of malware] further support the conclusion that Respondent registered and used the <asburymethodistvillage.com> domain name in bad faith under Policy ¶ 4(a)(iii)”). The Panel finds that the evidence provided by Complainant is sufficient to support a finding that Respondents use of the disputed domain name prompted users to install a SecurityBrowse software containing malware. As such, the Panel finds that Respondent uses the domain name in connection with malicious software when determining Respondent’s alleged bad faith under Policy ¶ 4(a)(iii).


Further, Complainant argues that Respondent had actual or constructive knowledge of Complainant’s SPECTRUM marks at the time of registering the <spectrum.tv> domain name. The Panel is aware that it may disregard arguments of bad faith based on constructive notice as UDRP case precedent declines to find bad faith as a result of constructive knowledge. *See Orbitz Worldwide, LLC v. Domain Librarian*, FA 1535826 (FORUM Feb. 6, 2014) (“The Panel notes that although the UDRP does not recognize ‘constructive notice’ as

sufficient grounds for finding Policy ¶ 4(a)(iii) bad faith, the Panel here finds actual knowledge through the name used for the domain and the use made of it.”). However, this Panel finds disingenuous the Respondent's claimed lack of actual knowledge of Complainant's trademark given that Respondent resides in Los Angeles where Spectrum is one of the largest cable media providers. And, Respondent used the trademark domain name to direct traffic to a website that links competitors of Complainant. The Panel agrees with Complainant that Respondent had actual knowledge of Complainant's rights in the mark prior to registering the disputed domain name and finds that actual knowledge does adequately demonstrate bad faith under Policy ¶ 4(a)(iii). *See iFinex Inc. v. xu shuaiwei*, FA 1760249 (FORUM Jan. 1, 2018) (“Respondent’s prior knowledge is evident from the notoriety of Complainant’s BITFINEX trademark as well as from Respondent’s use of its trademark laden domain name to direct internet traffic to a website which is a direct competitor of Complainant”). Complainant contends that Respondent’s knowledge can be inferred given its use of the SPECTRUM mark in the domain name and based on Complainant’s general fame and notoriety. Thus, if the Panel agrees that Respondent had actual knowledge of Complainant’s mark, the Panel may find bad faith under Policy ¶ 4(a)(iii) on that basis.

## **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 **<spectrum.tv>** domain name be **TRANSFERRED FROM RESPONDENT TO COMPLAINANT**.

  
Honorable Daniel Banks  
Arbitrator

Daniel B. Banks, Jr., Panel Chair  
Professor David E. Sorkin, Panelist  
David L. Kreider, Panelist  
Dated: February 7, 2019