

ADMINISTRATIVE PANEL DECISION

Torklift Central Welding of Kent, Inc. v. M Olesnevich Case No. D2022-1727

1. The Parties

Complainant is Torklift Central Welding of Kent, Inc., United States of America (“United States”), represented by R. Reams Goodloe, P.S., United States.

Respondent is M Olesnevich, United States.

2. The Domain Name and Registrar

The disputed domain name <glowsteprevolution.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 11, 2022. On May 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email to Complainant on May 26, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint.

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 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on June 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 28, 2022. The Center received email communications from Respondent on June 8, 14, and 30, 2022.

On June 30, 2022, the Center received a supplemental filing from Complainant. In its discretion, the Panel has considered the supplemental filing, as it contained probative information regarding Respondent’s identity and his awareness of Complainant’s business and trademark.

The Center appointed Robert A. Badgley as the sole panelist in this matter on July 7, 2022. The Panel finds that it was properly constituted. 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

Complainant manufactures various products, including a portable stair system which may be attached to vehicles such as recreational trailers. Complainant's stair system, called GLOWSTEP REVOLUTION, features adjustable bases to address uneven ground surfaces and glow-in-the-dark points to address nighttime use. Beginning in 2015, Complainant published on YouTube a number of videos demonstrating the GLOWSTEP REVOLUTION's features and uses. Complainant also advertised the GLOWSTEP REVOLUTION product in the March 2015 issue of *Trailer Life* magazine, and that periodical featured an article about the GLOWSTEP REVOLUTION product in its September 2015 issue. As early as July 6, 2015, Complainant advertised and described the GLOWSTEP REVOLUTION product at its main website, located via the domain name <torklift.com>.

Complainant holds a registered trademark with the United States Patent and Trademark Office for GLOWSTEP REVOLUTION, Reg. No. 6,022,059, registered on March 31, 2020 in connection with "steps for attachment to land vehicles." The registration indicates a date of first use in commerce of October 26, 2015.

The Domain Name was registered on June 23, 2016, after Complainant had been using GLOWSTEP REVOLUTION for more than a year.

The Domain Name does not resolve to an active website. Rather, it resolves to a GoDaddy parking page. At the time the Complaint in this proceeding was filed, the GoDaddy page listed the Domain Name for sale at a price of USD 4,500. After this proceeding commenced, the asking price for the Domain Name was USD 35,000.

According to Complainant, Respondent was one of its employees from September 2, 2014 to January 28, 2015. This allegation is supported in the record by payroll information matching the name, address, and phone number of the named Respondent here (according to the Whois database) and Complainant's former employee. According to Complainant, Respondent was a sales representative who was acquainted with Complainant's current products, as well as those in development (such as the GLOWSTEP REVOLUTION product).

Respondent has not denied that he was formerly an employee of Complainant. Nor has he denied being aware of the incipient GLOWSTEP REVOLUTION product while employed with Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not submit any formal Response, and in its three brief email communications to the Center did not dispute any of Complainant's substantive allegations. Respondent's three emails stated, in their entirety:

June 8, 2022: "Just tell them to click on the domain name. It says the name is listed on godaddy auctions, they can click on it from there and buy it. Pretty simple solution. Stop the harassment."

June 14, 2022: "Here is a link to the page the interested party can purchase the name [link omitted here]."

June 30, 2022: "The deadline has past [*sic*] to submit a reply. I request reply submitted with supplemental information after 6-28-2022 to not be considered and removed".

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark GLOWSTEP REVOLUTION through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is identical to that mark.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your 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) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward in this proceeding to dispute the main allegations and evidence put forth by Complainant, namely, that Respondent was employed by Complainant while the GLOWSTEP REVOLUTION product was in development and that Respondent was aware of that product.

According to the undisputed record here, the only use to which Respondent has ever put the Domain Name is to offer it for sale at a steep profit. That is a far cry from vesting Respondent with a legitimate interest in the Domain Name.

The Panel concludes that Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section.

Based on the evidence and plausible allegations put forth by Complainant, and the lack of any denial by Respondent, it appears rather obvious to the Panel that Respondent targeted Complainant (his former employer) and the latter's GLOWSTEP REVOLUTION trademark in order to sell the Domain Name at a hefty markup price. This is a clear case of bad-faith cybersquatting within the meaning of the Policy.

Complainant has established Policy paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <glowsteprevolution.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: July 21, 2022