

ADMINISTRATIVE PANEL DECISION

Darden Concepts, Inc. v. Michael Sarjoe, Wynn Resort
Case No. D2022-4848

1. The Parties

The Complainant is Darden Concepts, Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Michael Sarjoe, Wynn Resort, United States.

2. The Domain Name and Registrar

The disputed domain name <dardens-inc.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 17, 2022. On December 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 19, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name that differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 19, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on December 21, 2022.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint, and this proceeding commenced on December 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 18, 2023. The Respondent did not submit a response. Accordingly, the Center notified the Respondent’s default on January 20, 2023.

The Center appointed A. Justin Ourso III as the sole panelist in this matter on January 26, 2023. 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

Darden Concepts, Inc. (“Concepts”), an American corporation, the named complainant, is a wholly-owned subsidiary of Darden Corporation (“Corporation”), an American corporation, which, in turn, is a wholly-owned subsidiary¹ of Darden Restaurants, Inc. (“Restaurants”), a publicly-held American corporation listed on the New York Stock Exchange. This Decision refers to Concepts, Corporation, and Restaurants collectively as the “Complainant”. Restaurants owns and operates more than 1,850 restaurants internationally, including a number of well-known restaurant brands, which generated over USD 9.6 billion in sales in its fiscal year ending in 2022. Corporation is responsible for restaurant administration and business management for its parent, Restaurants.

Concepts, either directly or through its parent, Corporation, owns multiple registrations in the United States and other countries for trademarks that consist of, or include, DARDEN and DARDEN RESTAURANTS for restaurant services. The earliest United States registration for DARDEN, Reg. No. 3,766,853, was issued on March 30, 2010, and the earliest registration for DARDEN RESTAURANTS, Reg. No. 2,240,043, was issued on April 20, 1999. Concepts also owns a registration for the composite figurative mark, DARDEN + design, U.S. Reg. No. 3,766,865, issued on March 30, 2010.

Restaurants registered the domain name <darden.com> on March 11, 1997, which it uses for its company web site for its restaurant brands at “www.darden.com”. The Complainant’s employees conduct business using email addresses associated with this domain name.

The Respondent registered the Domain Name on November 24, 2022.

5. Parties’ Contentions

A. Complainant

In addition to facts set forth in the Factual Background in Part 4 above, the Complainant contends the following.

Regarding the element of confusing similarity with a trademark in which it has rights, the Complainant contends that the Domain Name is confusingly similar to its trademark DARDEN because it contains the trademark in its entirety and that the additional elements “inc”, an abbreviation for the word “incorporated”, and a hyphen do not prevent a finding of confusing similarity.

Regarding the element of no rights or legitimate interests in the Domain Name, the Complainant contends that it has not transferred any trademark rights or authorized the Respondent to use any of its trademarks; the Respondent has not been commonly known by the Domain Name or acquired any trademark rights in the Domain Name; the Registrar’s Whois record identifies the Respondent as “Privacy service provided by Withheld for Privacy ehf,” not as “Darden” or any similar name; because of the Complainant’s sales under its multiple trademark registrations for over twenty-three years it is practically impossible that the Respondent is commonly known by the Complainant’s DARDEN trademark; the Respondent has used the Domain Name

¹ Restaurants formerly listed Corporation in its annual reports (Securities & Exchange Commission Form 10-K) as a “significant” subsidiary. As of the latest annual report, the 2022 Form 10-K, it no longer lists Corporation as a “significant” subsidiary. This change in the characterization of Corporation for regulatory purposes is irrelevant to the issues in this proceeding. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.4.

for an email platform to engage in a phishing scam impersonating the Complainant, which demonstrates that its use has not been in connection with a *bona fide* offering of goods or services; and that the Respondent's deceptive impersonation activity demonstrates that the Respondent cannot establish rights or legitimate interests in the Domain Name.

Regarding the element of bad faith registration and use of the Domain Name, the Complainant contends that the Respondent's engaging in a phishing scam to impersonate the Complainant, including using the design element in the Complainant's composite mark, sometimes called a figurative element, which enhanced the impersonation and demonstrates bad faith by registering the Domain Name to disrupt the business of a competitor and to attempt to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademark; its phishing is *per se* illegitimate activity and manifest evidence of bad faith; and the use of a Domain Name so obviously connected with a trademark that the Complainant registered more than twenty-three years before the Respondent registered the Domain Name suggests opportunistic bad faith, making it not merely likely that the Respondent knew of the Complainant's mark but inconceivable that the Respondent chose the Domain Name without knowledge of the Complainant and its name and trademark, all of which demonstrate that the Respondent registered and is using the Domain Name in bad faith.

The Complainant requested transfer of the Domain Name.

B. Respondent

The Respondent did not submit a response to the Complaint.

6. Discussion and Findings

A. The Effect of the Respondent's Default

If a respondent does not submit a response to a complaint, a panel decides the dispute based upon the complaint. Rules, paragraphs 5(f) and 14(a). Because the Complainant has the burden of proof, Policy, paragraph 4(a), the Complainant must still prove the elements of a claim to obtain the requested relief, notwithstanding the Respondent's default. [WIPO Overview 3.0](#), section 4.3.

In the absence of exceptional circumstances, a respondent's failure to respond to a complaint requires that a panel draw the inferences from this failure that it considers proper. Rules, paragraph 14(b). The Panel finds that no exceptional circumstances exist for the failure of the Respondent to submit a response. Accordingly, the Panel infers that the Respondent does not deny the facts alleged and the contentions urged by the Complainant based upon these facts, and will draw all reasonable inferences that are proper from the evidence and the facts found by the Panel. *Id.*

Although the Panel may draw negative inferences from the Respondent's default, the Complainant may not rely on conclusory allegations and must support its allegations with evidence to prove the three elements. [WIPO Overview 3.0](#), section 4.3.

B. Elements of a Claim

A complainant must prove three elements to obtain relief: (i) the domain name is identical or confusingly similar to a trademark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in the domain name; and (iii) the respondent registered and is using the domain name in bad faith. Policy, paragraph 4(a).

(i) Identical or Confusingly Similar

On the first element, the Complainant must prove that (1) it has rights in a trademark, and (2) the Domain Name is identical or confusingly similar to this trademark. Policy, paragraph 4(a)(i).

The Panel finds that the Domain Name is confusingly similar to the Complainant's DARDEN trademark. The Domain Name incorporates the entire trademark, and the trademark is readily recognizable within the Domain Name. [WIPO Overview 3.0](#), section 1.7. The addition in the Domain Name of the letter "s" after the trademark; a hyphen after the trademark and the letter "s"; and the abbreviation "inc" after the trademark and the letter "s" do not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8.

Accordingly, the Panel concludes that the Complainant has proven the first element, that the Domain Name is confusingly similar to a trademark in which it has rights.

(ii) Rights or Legitimate Interests

The Policy provides a non-exclusive list of circumstances that, if a UDRP panel finds proved, demonstrates that a respondent has rights to, or legitimate interests in, a domain name for the purposes of paragraph 4(a)(ii) of the Policy: (i) before any notice to a respondent of the dispute, its 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) a respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or (iii) a respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to divert consumers misleadingly or to tarnish the trademark or service mark at issue. Policy, paragraph 4(c).

The Respondent has not claimed the existence of any of these circumstances. The Complainant, to the contrary, has made a *prima facie* showing that the Respondent lacks any rights or legitimate interests in the Domain Name. Rules, paragraphs 10(d) and 14(b); [WIPO Overview 3.0](#), section 4.3. Where a complainant shows *prima facie* that a respondent lacks rights or legitimate interests, the burden of production on this second element shifts to the respondent to come forward with relevant evidence proving rights or legitimate interests in the domain name. [WIPO Overview 3.0](#), section 2.1. The Respondent here has not submitted any evidence to rebut the *prima facie* showing.

Additionally, the Panel finds that the Registrar identified the Respondent as "Michael Sarjoe, Wynn Resort," a name that does not resemble the Domain Name; the Complainant's trademark rights precede the registration of the Domain Name; and no evidence exists of a *bona fide* commercial, noncommercial, or fair use of the Domain Name, which corroborate that the Respondent is not known by the Domain Name and is not using the Domain Name for a legitimate commercial, noncommercial, or fair use.

The Complainant has also alleged, in support of its contention that the Respondent lacks rights or legitimate interests in the Domain Name, that the Respondent registered and used the Domain Name to engage in phishing activities impersonating the Complainant. Because the Panel has already found that the Complainant has proven the second element, the Panel will defer a discussion of this alleged scheme to Part 6(B)(iii) below. [WIPO Overview 3.0](#), section 2.15.

Accordingly, the Panel concludes that the Complainant has proven the second element, that the Respondent lacks rights or legitimate interests in the Domain Name.

(iii) Registered and Used in Bad Faith

The Policy expressly provides that the four particular circumstances that it specifies as "evidence of the registration and use of a domain name in bad faith" are "without limitation." Policy, paragraph 4(b). Panels have consistently found that "given that the use of a domain name for *per se* illegitimate activity such as [...] phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith." [WIPO Overview 3.0](#), section 3.1.4. See [WIPO Overview 3.0](#), section 3.4.

In the view of this Panel, deceptive conduct, including impersonation and phishing, is evidence of registration and use of a domain name in bad faith.

The Complainant has shown and the Panel finds that the Respondent has engaged in an email phishing scheme impersonating the Complainant and targeting one of the Complainant's suppliers, which is *per se* illegitimate activity and a bad faith use of the Domain Name, [WIPO Overview 3.0](#), sections 3.1.4 and 3.4, and that the Respondent enhanced its impersonation by using the design, or figurative, element in its composite trademark in at least one impersonating email.

This finding supports the Panel's conclusion that the Respondent intentionally registered the Domain Name in bad faith to impersonate the Complainant and used it in bad faith to impersonate, taking unfair advantage of the Complainant's trademark. [WIPO Overview 3.0](#), sections 3.1, 3.1.4, and 3.4.

Additionally, it is common knowledge that owners of websites customarily use email addresses containing the domain name of a website in electronic mail communications. The use of a domain name that presents a likelihood of confusion with a trademark in emails that do not originate with the trademark owner presents a risk to the reputation of a trademark and its owner. *Applied Materials, Inc. v. Proxy Protection LLC / John Smith*, WIPO Case No. [D2022-0026](#). With evidence of an impersonating email, the risk of additional deceptive or abusive emails is real. *Id.*

The Panel finds that the risk of deceptive emails associated with the Domain Name is another reasonable basis, given the evidence of impersonation and the failure to rebut, from which to infer bad faith use and that the Respondent's bad faith existed at the time of its registration of the Domain Name.

Accordingly, the Panel concludes that the Complainant has proven the third element, that the Respondent registered and has is using the Domain Name in bad faith.

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, <dardens-inc.com>, be transferred to the Complainant.

/A. Justin Ourso III/

A. Justin Ourso III

Sole Panelist

Date: February 8, 2023