

ADMINISTRATIVE PANEL DECISION

American Woodmark Management Company v. Roy Larson
Case No. D2023-4006

1. The Parties

Complainant is American Woodmark Management Company, United States of America (the “United States” or “US”), represented by Gavin Law Offices, PLC, US.

Respondent is Roy Larson, US.

2. The Domain Name and Registrar

The disputed domain name <shenandoah.pro> 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 September 26, 2023. On September 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 26, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Registration Private, Domains by Proxy.com), and contact information in the Complaint. The Center sent an email communication to Complainant on October 2, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on October 2, 2023.

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 Respondent of the Complaint, and the proceedings commenced on October 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 29, 2023. Respondent did not submit any formal Response. On October 9, 2023, an individual submitted an informal email response (from the same email address provided as registration data for the disputed domain name by Registrar) stating, “No Complaint attached returned for possible fraud.” This individual did not respond to requests by the Center for him to identify himself and

clarify his relationship to Respondent, or information sufficient to establish the legitimacy of his email in the context of the current proceedings. Accordingly, the Center notified Respondent with Commencement of Panel Appointment Process.

The Center appointed Phillip V. Marano as the sole panelist in this matter on November 17, 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

Since its incorporation in 1980, Complainant has become one of the largest cabinetry manufacturers (including numerous lines of kitchen, bath, and home organization products) in the US. Complainant offers its products through its official <shenandoahcabinetry.net> domain name and website. Complainant owns valid and subsisting registrations for the SHENANDOAH trademark, as well as numerous Shenandoah-formative trademarks (like SHENANDOAH CABINETRY, and SHENANDOAH PRO) (collectively referred to as Complainant's "SHENANDOAH trademarks") in numerous countries, including the trademark for SHENANDOAH (Reg. No. 4,777,358) registered in the US on July 21, 2015, with the earliest priority dating back to first use in August of 2009.

Respondent registered the disputed domain name on August 25, 2023. At the time this Complaint was filed, the disputed domain name resolves to website content that is either (depending on the visitor's browser) (i) filtered and replaced by the message "Malware and Phishing; This site is blocked because it is a known security threat" or (ii) parked by the Registrar with pay-per-click ("PPC") ads to "related searches" for things like "Cabinetry", "Rta Cabinets" and "College Admission Help Counseling" that resolve to apparent competitors of Complainant.

5. Parties' Contentions

A. Complainant

Complainant asserts ownership of the SHENANDOAH trademarks and has adduced evidence of trademark registrations in numerous regions and countries around the world including in the US, with earliest priority dating back to August of 2009. The disputed domain name is confusingly similar to Complainant's SHENANDOAH trademarks, according to Complainant, because it fully incorporates Complainant's SHENANDOAH and SHENANDOAH PRO trademarks.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the lack of any association or authorization between Complainant and Respondent; the lack of any evidence that Respondent is known by the name "Shenandoah" or "Shenandoah Pro"; and Respondent's use in connection with a "known security threat" parking page.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: the lack of any association or authorization between Complainant and Respondent; the well-known nature of Complainant's SHENANDOAH trademarks; and Respondent's use in connection with a "known security threat" parking page.

B. Respondent

Respondent did not reply to Complainant's contentions. However, on October 9, 2023, an individual submitted an informal email response (from the same email address provided as registration data for the disputed domain name by Respondent) stating, "No Complaint attached returned for possible fraud."

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i) The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii) The disputed domain name has been registered and is being used in bad faith.

Panels typically treat a respondent's submission of a so-called "informal response" (merely making unsupported conclusory statements and/or failing to specifically address the case merits as they relate to the three UDRP elements, e.g., simply asserting that the case "has no merit" and demanding that it be dismissed) in a similar manner as a respondent default. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. Indeed, the Panel views Respondent's singular submission, asserting "No Complaint attached returned for possible fraud", as akin to a respondent default.

Although Respondent did not formally reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See [WIPO Overview 3.0](#), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the SHENANDOAH trademarks have been registered in numerous jurisdictions with priority dating back to August 2009. Thus, the Panel finds that Complainant's rights in the SHENANDOAH trademarks have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's SHENANDOAH trademarks. In this Complaint, the disputed domain name is identical to Complainant's SHENANDOAH trademarks because, disregarding the ".pro" generic Top-Level Domain ("gTLD"), the entirety of the SHENANDOAH trademark is contained within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar..."). In regards to gTLDs, such as ".pro" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11. Nevertheless, where a disputed domain name and the applicable gTLD in combination contain the relevant trademark, panels may also consider the disputed domain name in its entirety for the purposes of assessing confusing similarity (e.g. for a hypothetical Top-Level Domain ".mark" and a mark "TRADEMARK", the domain name <trade.mark> would be confusingly similar for standing purposes under the Policy. [WIPO Overview 3.0](#), section 1.11.3. As such, ".pro" may be taken into account in order to assess identity or confusingly similarity

as part of the mark that the disputed domain name must be compared with, whereby the dot is insufficient to distinguish the disputed domain name from Complainant's SHENANDOAH PRO trademark. Complainant has established sufficient trademark rights to its SHENANDOAH PRO trademark, which is identical to the <shenandoah.pro> disputed domain name.

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. WIPO Overview, section 2.1.

It is evident that Respondent, identified by WhoIs data for the disputed domain name as "Roy Larson", is not commonly known by the disputed domain name or Complainant's SHENANDOAH trademarks, or the term "shenandoah pro".

Service of PPC advertisements through the disputed domain name attempts to trade off the goodwill of Complainant and accordingly cannot constitute any *bona fide* offering of goods or services using the disputed domain name. [WIPO Overview 3.0](#), section 2.9 (Unless "genuinely related to the dictionary meaning" of the disputed domain name, "[PPC] links do not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of Complainant's mark or otherwise mislead Internet users.") See, e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#) (use of a domain name in connection with a web page that "only contains advertisements as sponsored links" is "for presumed commercial gain"); *Zions Bancorporation v. Domain Administrator, Fundacion Private Whois*, WIPO Case No. [D2014-0465](#) ("a parking website containing sponsored links... cannot be considered either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the Domain Name as the Respondent is unduly profiting from the Complainant's goodwill by misleading Internet users to its website"); and *Canyon Bicycles GmbH v. Domains By Proxy, LLC / Rob van Eck*, WIPO Case No. [D2014-0206](#) (a disputed domain name "pointing to a website featuring PPC links... could not be construed as a *bona fide* or legitimate noncommercial or fair use"). In this Complaint, Respondent has configured the disputed domain name, which is identical to Complainant's SHENANDOAH and SHENANDOAH PRO trademarks for purposes of the Policy, parked by the Registrar with PPC ads to "related searches" for things like "Cabinetry", "Rta Cabinets" and "College Admission Help Counseling" that resolve to apparent competitors of Complainant.

In view of the foregoing, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

i) Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or

ii) Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

iv) By using the disputed 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.

Where parties are both located in the US and the complainant has obtained a federal trademark registration pre-dating a respondent's domain name registration, panels have applied the concept of constructive notice, subject to the strength or distinctiveness of the complainant's trademark, or circumstances that corroborate respondent's awareness of the complainant's trademark. [WIPO Overview 3.0](#), section 3.2.2. In this Panel's view, when the disputed domain name was registered on August 25, 2023, Respondent had constructive knowledge of Complainant's pre-existing rights in Complainant's SHENANDOAH trademarks under US law. See e.g., *Champion Broadcasting System, Inc. v. Nokta Internet Technologies*, WIPO Case No. [D2006-0128](#) (Applying the principle of constructive notice where both parties are located in the United States). Indeed, circumstances in this case corroborate Respondent's awareness of Complainant and Complainant's SHENANDOAH trademark, including (as described above and below) Respondent's configuration of the disputed domain name to resolve to PPC parking advertisements for goods and services in direct competition with Complainant's SHENANDOAH branded cabinetry products.

Third-party generated material, such as parking websites with PPC links, cannot be disclaimed by Respondent to prevent a finding of bad faith. WIPO Overview, section 3.5 ("A respondent cannot disclaim responsibility for content appearing on the website associated with its domain name" regardless of whether "such links [are] generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that respondent itself may not have directly profited...."). See *SAP SE v. Domains by Proxy, LLC / Kamal Karmakar*, WIPO Case No. [D2016-2497](#) ("It is well established that where a domain name is used to generate revenue in respect of 'click through' traffic, and that traffic has been attracted because of the name's association with the Complainant, such use amounts to use in bad faith ... Revenue will be generated by such visitors clicking on the provided links and it does not matter whether that revenue accrues to the Respondents or the operator of the parking site") (internal citations omitted). Here, Respondent has misappropriated Complainant's identical SHENANDOAH and SHENANDOAH PRO trademarks in the disputed domain name and configured it to resolve to a website featuring PPC advertisements for cabinetry products and services apparently in direct competition with Complainant.

In view of the foregoing, the Panel concludes that Complainant has established the third element of the Policy.

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 disputed domain name, <shenandoah.pro>, be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: December 4, 2023