

ADMINISTRATIVE PANEL DECISION

Pidilite Industries Limited v. Private Registration, NameBrightPrivacy.com /
Amit Agarwal
Case No. D2022-0003

1. The Parties

The Complainant is Pidilite Industries Limited, India, represented by Khaitan & Co., India.

The Respondent is Private Registration, NameBrightPrivacy.com, United States of America (“United States”) / Amit Agarwal, Czech Republic.

2. The Domain Name and Registrar

The disputed domain name <fevicol.com> (the “Disputed Domain Name”) is registered with DropCatch.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 3, 2022. On January 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 5, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 9, 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 amended Complaint on January 12, 2022.

The Center verified that the Complaint together with the amended 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 the proceedings commenced on January 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2022. The Center received an email communication from the Respondent on February 2, 2022 requesting the extension of the Response period. The Center granted the extension and extended the due date for Response to February 12, 2022. No Response was received from

the Respondent. Accordingly, the Center notified the commencement of Panel appointment process on February 16, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on February 21, 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

The Complainant is an Indian company. It is a manufacturer of adhesives and sealants, construction and paint chemicals, art materials, industrial adhesives, industrial and textile resins and organic pigments and preparations. It has carried out this business since at least 1969. One of its range of products is sold under the trade mark FEVICOL. This product range is popular in India and has been sold (via a predecessor entity) since 1959. The Complainant owns various trade marks for the term FEVICOL the earliest of which is Indian trade mark registration No. 194815B registered on March 2, 1960. These trade marks are referred to as the FEVICOL trade mark in this decision.

The Complainant has registered the domain name <fevicol.in> which points to its website at “www.fevicol.in”. The website enables access to information regarding the Complainant’s FEVICOL products.

The word “fevicol” has no separate or independent meaning apart from in relation to the Complainant or its products.

The Disputed Domain Name was registered on September 13, 2021. It does not resolve to a functioning website. On September 17, 2021 the Complainant received an email from a sender described as “fortunebusiness” indicating it owned the Disputed Domain Name and enquiring as to whether the Complainant wished to buy it. The email stated “I am a domain investor and understand the worth of the name, before putting it to open market I am checking with you”.

5. Parties’ Contentions

A. Complainant

The Complainant’s case can be summarised as follows.

- a) The Disputed Domain Name is identical to the FEVICOL trade mark.
- b) The Respondent does not have any rights or legitimate interests in the Disputed Domain Name.
- c) The Respondent has registered and used the Disputed Domain Name in bad faith. The email of September 17, 2021 (above) shows the Respondent registered the Disputed Domain Name with a view to selling it to the Complainant.

B. Respondent

The Panel will in its discretion treat the Respondent’s email communication of February 3, 2022 with the Center as the Response. It reads as follows [spelling and punctuation mistakes present in original]:

“With reference to the Letter i have received one physical letter came to me on my reception and subsequently i find your email.
Due to Covid Pandemic i have limited resource available. would request you to provide 4-5 weeks time to answer from my legal adviser.

this might be some extra time to speak to my Lawyer to prepare answer to you request under this pandemic, i am writing this as general answer to address your email.

I find with your email that party "Fevicol" is the name register under trademark in various category only in India and doesn't apply to outside India.

Pidilite is the Company which owned only .in (fevicol.in) domain and no other TLD domain owned by them, it clearly indicate that TLD domain it is not relevant to them or they don't have any interest in it.

I bought Fevicol.com domain with ICANN authorise partner under complete legal auction process and spend around 1000 + \$ with a clear intention to start my online Marketting listing company in my country. I have also check before buying this domain has no online past history and i found nothing in since year 2013.

I have also register another TLD Fevicol.net to support my business.

As i understand from the complaint party "Fevicol" is trade mark in India under some category and I am not clear on that so i will put my legal adviser to address this issue to avoid any future business complication with Pidilite.

Although we don't have any physical product which match to Pidilite Trademark or Patent so there is no conflict of Interest.

Till i have clarity on this topic i have requested our IT developer to blocked GEO location blocked from India. we will remove the restriction once we will have clarity from our legal advisor.

As you know everything uncertain in current covid pandemic and there for we are taking some extra time to launch our services at the same time we are working slowly to develop our product for all including mobile application etc.

I would like to ask few question to understand pain area for Pidilite and probably i will try to help in best possible way.

1. has they ever hold the ownership of the any TLD domain like A. "fevicol.com" B. fevicol.net. C. fevicol.org D. fevicol.int 2. If you buy any domain from any registrar - by default its Parked by registrar or you can select coming soon option which is normal practice.

3. what Pidilite is looking for from us is not clear from his communication - like owning any domain extenuation TLD or Non TLD is not permitted ?

4. As i see this from document which was enclose that Pidilite is 60-70 year old company and they have only .in domain.

As a summery :-

I Amit Agarwal is working for the company I've never been a party in a UDRP proceeding in past and this is strange for me.

I purchased the domain from an online auction site , showing that the domain was available from its current owner, or they no longer need it or haven't built it out. I state that, I was not having any knowledge of its trademark, I also didn't want to sell this domain name to anybody, but to built this domain name for my company and supporting website to support my business and our customer.

After receiving an email, I learned about Complainant's trademark, but I purchased it with good faith and for a good cause, as mentioned above. I'm not in a business similar to the Complainant and like to use the domain that would never cross the line, as my purpose is clear, as I mentioned. I never used any Logo or any data belongs to Pidilite so there is no violation on that.

I would not like to answer any communication which is not done by me.

The domain archive shows that this domain was not available after 2013

https://web.archive.org/web/*/fevicol.com

I'm a legitimate bidder who wins in that open bidding process My intent with the names is to run a website for the cause mentioned above, with headquarters in Prague, Czech Republic. The domain content, design, and functionality are already in construction, and till that, we don't run any advertisements on it.

I'm a God-fearing person, and I don't have any ad-faith intent to profit from your distinctive name or trademark and i can assure that you will not face any Trademark or Patent issue on our business domain name Fevicol.com.

Would like to thank you for bringing this issue to our notice and assure you that you will not have any violation.

I will discuss the same with our Legal advisor to understand and limitation with the name "Fevicol" globally as this is very important for us for our business growth in coming future.

Please feel free to write as you have my direct email id and phone number. Please do not share my personal detail with anyone as it comes under GDPR. Thank you”.

6. Discussion and Findings

Preliminary Matters

The Panel notes this is a case where one Respondent (NameBrightPrivacy.com) appears to be a privacy or proxy service.

The Panel in this case adopts the approach of most UDRP panels, as outlined in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) at section 4.4.5, as follows:

“Panel discretion

In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed.

Depending on the facts and circumstances of a particular case, *e.g.*, where a timely disclosure is made, and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent. On the other hand, *e.g.*, where there is no clear disclosure, or there is some indication that the privacy or proxy provider is somehow related to the underlying registrant or use of the particular domain name, a panel may find it appropriate to record both the privacy or proxy service and any nominally underlying registrant as the named respondent.”

In the present case, the Panel considers the substantive Respondent to be Amit Agarwal and references to the Respondent are to that person.

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

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

A. Identical or Confusingly Similar

The Complainant has submitted detailed evidence that it is the owner of the FEVICOL trade mark.

It is well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly, the Panel finds that the Disputed Domain Name is identical to the Complainant’s trade mark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy non-exhaustively lists three circumstances that demonstrate a right or legitimate interest in the domain name:

- i. before any notice to you 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 (as an individual, business or other organisation) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or
- iii. you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Panel has considered the Respondent's claim that he registered the Disputed Domain Name in connection with an intended business of his own. There is no obvious reason why the Respondent should think the word "fevicol" suitable for such a business. It is a coined term with no meaning apart from in relation to the Complainant. The Respondent has not offered any explanation as to how or why he chose this term and absolutely no corroborating evidence of the Respondent's claimed business plans has been provided. As noted in [WIPO Overview 3.0](#) at section 2.2 "If not independently verifiable by the panel, claimed examples of use or demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services cannot be merely self-serving but should be inherently credible and supported by relevant pre-complaint evidence". No such evidence has been provided. The Panel declines to accept the Respondent's explanation which seems more likely than not to be a self-serving explanation created in response to the present Complaint.

Accordingly none of the factors in paragraph 4(c) apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the FEVICOL trade mark. The Complainant has prior rights in the FEVICOL trade mark which precede the Respondent's registration of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see for example *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)). For the reasons discussed above the Panel concludes the Respondent has failed to produce such evidence.

Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances, the distinctive nature of the FEVICOL trade mark, and the evidence as to the extent of the reputation the Complainant enjoys in the FEVICOL trade mark, and the identical nature of the Disputed Domain Name to the FEVICOL trade mark, and the lack of any credible explanation from the Respondent as to why he registered the Disputed Domain Name leads the Panel to conclude the registration and use was in bad faith. In the present case, the Panel concludes that it is highly unlikely that the Respondent selected the Disputed Domain Name independently and without knowledge of the Complainant or its products.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the present circumstances the Panel agrees with the Complainant that factor (i) applies. It is not likely to be coincidental that the Respondent registered the Disputed Domain Name on September 13, 2021 and on September 17, 2021 the Complainant received the email (see above) offering to sell it the Disputed Domain Name. The Panel infers that email was sent by or on behalf of the Respondent and indicates that the Respondent's motive in registering the Disputed Domain Name was to sell it to the Complainant for valuable consideration in excess of his documented out-of-pocket costs directly related to the Disputed Domain Name. The Panel also notes that the Respondent in his communication has not said anything at all about this email and hence has not rebutted the inference that can be derived from it as to the Respondent's motives.

Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

7. Decision

For all 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 <fevicol.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: March 10, 2022