

ADMINISTRATIVE PANEL DECISION

Dewberry Engineers Inc. v. Contact Privacy Inc.

Customer 12411923346 / brian bach

Case No. D2022-0305

1. The Parties

Complainant is Dewberry Engineers Inc., United States of America (“United States”), represented by McCandlish Lillard, P.C., United States.

Respondent is Contact Privacy Inc. Customer 12411923346, Canada / brian bach, United States.

2. The Domain Name and Registrar

The disputed domain name <dewberrys.net> (the “Domain Name”) is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 28, 2022. On January 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 31, 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 February 1, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 2, 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 Respondent of the Complaint, and the proceedings commenced on February 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 23, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on February 28, 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 describes itself as “an engineering, architecture, real estate services, and emergency management firm which offers a wide variety of additional services and has more than fifty locations in the United States”.

Complainant’s commercial website is located at the domain name <dewberry.com>, a domain name Complainant has owned since 1998.

Complainant holds a number of registrations of the trademark DEWBERRY, including: United States Patent and Trademark Office (“USPTO”) Reg. No. 2,991,043, registered on September 6, 2005 in connection with a variety of services with a first use in commerce date of February 5, 2003.

The Domain Name was registered on January 10, 2022. The Domain Name does not resolve to a website.

5. Parties’ Contentions

A. Complainant

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

B. Respondent

Respondent did not reply to Complainant’s contentions.

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 DEWBERRY, through registration and use demonstrated in the record. The Panel finds the Domain Name to be confusingly similar to the DEWBERRY mark. The mark is entirely reproduced in the Domain Name, and the additional letter “s” does not prevent a finding of the confusing similarity between the mark and the Domain Name.

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 the Domain Name. Respondent has not articulated any *bona fide* reason for registering the Domain Name, and he has not disputed any of Complainant's allegations. It is undisputed that Respondent had received no permission from Complainant to register the Domain Name. Given the fact that the fruit "dewberry" is pluralized as "dewberries" and not as "dewberrys", noting Respondent's location the Panel considers that Respondent is likely an English native speaker or at least familiar with the English language, and the Panel finds this appears to be a case of typosquatting. Such conduct is not legitimate. In addition, the disputed domain name has not been used for any related purpose to "dewberries".

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. In view of the finding above that this appears to be a clear case of typosquatting, the Panel finds it more likely than not that Respondent had Complainant's DEWBERRY mark in mind when registering the Domain Name.

Complainant alleges that "the only conclusion is that the Disputed Domain Name was registered for one or more improper purposes, such as attempting to collect fraudulent payments from Complainant's customers, enabling creation of deceptive email addresses and impersonating Complainant's personnel, diverting traffic from Complainant's website, or seeking to sell the Disputed Domain Name to Complainant".

The Panel finds the foregoing allegation entirely plausible, and Respondent has not disputed this plausible allegation nor provided any explanation for the registration of the Domain Name. Accordingly, the Panel

concludes, on the record before it and based on a balance of probabilities, that Respondent registered the Domain Name to target Complainant's trademark and holds or exploits it likely for improper financial gain due to it being a typosquatted version of Complainant's trademark. This constitutes bad faith registration and use under the non-exclusive factors set forth above.

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 <dewberrys.net> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: March 10, 2022