

ADMINISTRATIVE PANEL DECISION

Brunswick Corporation v. Withheld for Privacy / BOBO Bop
Case No. D2022-0379

1. The Parties

Complainant is Brunswick Corporation, United States of America, represented by Kucala Law LLC, United States of America.

Respondent is Withheld for Privacy, Iceland / BOBO Bop, United States of America.

2. The Domain Name and Registrar

The disputed domain name <mercmarine.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 February 3, 2022. On February 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 4, 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 14, 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 15, 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 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 10, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on March 24, 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, a company dating back to 1845, describes itself as “a global leader in providing innovative recreational boating and marine products.” Complainant began as a maker of billiards tables and related accessories, and is also a manufacturer of bowling balls and related products.

One of Complainant’s divisions is Mercury Marine, which, Complainant asserts, “is now the world’s largest builder of marine propulsion systems with an impeccable record for delivering cutting edge marine engines.” Complainant’s principal website is at the domain name <brunswick.com>, but the Mercury Marine division also operates a website at the domain name <mercurymarine.com>, which domain name Complainant has owned since 1995.

According to Complainant, its Mercury Marine engines are commonly referred to as “Merc” engines. Complainant owns the Domain Name <mercmarine.com>, and uses it for email communications, internally and with its customers and vendors.

Complainant holds numerous trademark registrations in various jurisdictions, including United States Patent and Trademark Office (“USPTO”) Reg. No. 2,509,409 for the word mark MERCURY MARINE, registered on November 20, 2001 in connection with “outboard motor units and parts.” There is evidence in the record to confirm that the MERCURY MARINE mark is well-known.

The Domain Name was registered on June 11, 2021. The Domain name does not resolve to an active website.

According to Complainant, Respondent has used the Domain Name to impersonate Complainant and engage in a fraudulent scheme to bilk customers and vendors. Annexed to the Complaint are several emails in which the Domain Name was being used as an email address purportedly (but not actually) belonging to one of Complainant’s employees. In a December 17, 2021 cease-and-desist letter from Complainant’s counsel to Respondent, Complainant asserted:

“On June 11, 2021, you registered the Fraudulent Domain Name, which incorporates the famous MERCURY trademark. The Fraudulent Domain Name is identical to the original MERCMARINE.COM website and is confusingly similar to Brunswick’s MERCURY® Mark. The Fraudulent Domain Name was registered without the consent or authorization of Brunswick, the owner of the MERCURY® Mark. At present, the WHOIS registrant information for the domain is privacy-protected. According to Brunswick’s investigation, the Infringing Domain Name is being used in connection with a fraudulent scheme to defraud both Brunswick and its vendors/customers. Specifically, you connected the Fraudulent Domain Name to MX records and sent emails to third parties, including an actual Brunswick partner, impersonating a Mercury Marine employee, in an effort to defraud them. As a result of this scheme, Brunswick has suffered an actual harm.”

Respondent did not reply to this letter and, in this proceeding, has not denied any of the foregoing allegations.

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 MERCURY MARINE through registration and use demonstrated in the record. The Panel finds that the Domain Name is confusingly similar to this trademark. The MERCURY MARINE mark is identifiable within the Domain Name, despite the fact that "MERCURY" is shortened to "MERC" and despite the fact that the lower-case "i" is replaced with the lower-case "l."

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. The undisputed record in this case, including plausible allegations and documentary evidence, makes it very clear that Respondent registered the Domain Name in order to impersonate Complainant through emails to Complainant's customers and vendors in order to perpetrate fraud upon these parties by seeking to dupe them into making payments to Respondent's bank account. This is manifestly not a legitimate reason for registering the Domain Name.

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. It is obvious that Respondent targeted Complainant, as the Domain Name is deceptively similar to the domain name that Complainant uses in its business for emails to communicate with customers and vendors. Respondent's fraudulent scheme runs afoul of the above-quoted Policy paragraph 4(b)(iv).

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 <mercmarlne.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: March 28, 2022