

## **ADMINISTRATIVE PANEL DECISION**

Wastequip, LLC v. Privacy Service Provided by Withheld for Privacy ehf /  
Brave Heart Bull, Brave Heart  
Case No. D2022-0569

### **1. The Parties**

Complainant is Wastequip, LLC, a, United States of America (“United States” or “U.S.”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Brave Heart Bull, Brave Heart, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <wastequips.com> 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 17, 2022. On February 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 18, 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 Complainant on February 24, 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 25, 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 March 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 6, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on April 14, 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**

Without contest by Respondent, Complainant asserts in its Complaint, as amended, and its attached Annexes provide evidence sufficient to support that:

Founded in 1989, Complainant is a leading North American manufacturer of waste handling equipment products and services sold under its trademark WASTEQUIP (the "WASTEQUIP Mark"), including a wide range of containers, compactors, handlers, trailers, carts, refuse systems, and compaction products used to collect, handle, and transport solid waste, recyclables, liquid waste, and organics. Complainant serves chain stores, environmental service markets, governments and municipalities, grocery and food service markets, malls and shopping centers, oil and gas production markets, restaurants, and waste haulers through a network of dealers and sales representatives in North America, comprising over 2,000 employees at 33 facilities. Complainant claims notoriety and recognition of its brand as well-known based on its use worldwide for more than 30 years and content featuring its services under the WASTEQUIP Mark displayed in the Annexes to its Complaint.

Since January 21, 1997, when Complainant registered its domain name <wastequip.com>, Complainant has used its domain name to access its official website (the "Official WASTEQUIP Website") to provide information to its customers about its waste handling equipment products and services sold under the WASTEQUIP Mark.

Complainant owns a number of trademark registrations for the WASTEQUIP Mark worldwide, including:

- United States Trademark Registration No. 1, 866,004, WASTEQUIP, registered with the United States Patent and Trademark Office ("USPTO") on December 6, 1994, for custom manufacture of goods used in connection with the collection, storage, transportation and disposal of solid and liquid waste and refuse in international class 40 and claiming a first use date of April 1, 1990.
- United States Trademark Registration No. 4,443,337, WASTEQUIP, registered with the USPTO on December 3, 2013, for a range of waste handling containers, machinery and equipment in international classes 6 and 7 and claiming use dates of December 2007 and December 2010, respectively.
- Canada Trademark Registration No. TMA904037, WASTEQUIP, registered May 20, 2015.
- Mexico Trademark Registration No. 1389387, WASTEQUIP, registered August 12, 2013.

The disputed domain name was registered on February 7, 2022, and resolves to an inactive website, but Complainant shows in the annexes to the Complaint that Respondent has associated the disputed domain name with email servers and provides probative evidence that the disputed domain name has been set up with MX-records.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's trademark, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

## B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall "draw such inferences therefrom as it considers appropriate".

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied.

Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights and has, therefore, met its burden under paragraph 4(a)(i) of the Policy; and

Complainant has, to the satisfaction of the Panel, shown that Respondent has no rights or legitimate interests in respect of the disputed domain name and has, therefore, met its burden under paragraph 4(a)(ii) of the Policy; and

Complainant has, to the satisfaction of the Panel, shown that the disputed domain name has been registered and is being used in bad faith and has, therefore, met its burden under paragraph 4(a)(iii) of the Policy.

The Panel will address its findings on each of these requirements in more detail below.

The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

### A. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the coined term WASTEQUIP for various waste handling products and services dating back to 1990. Sufficient evidence has been submitted, in the form of electronic copies of active USPTO trademark registration certificates, showing the above referenced trademark registrations for the WASTEQUIP Mark in the name of Complainant. Complainant has through such valid and subsisting trademark registrations demonstrated its rights in the WASTEQUIP Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant's rights in the WASTEQUIP Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's WASTEQUIP Mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7. Prior UDRP panels have also held "in 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 to that mark for purposes of

UDRP standing". See, *id*; see also, *Wal-Mart Stores, Inc. v. MacLeod d/b/a/ For Sale*, WIPO Case No. [D2000-0662](#).

A side by side comparison between the disputed domain name and the WASTEQUIP Mark shows the disputed domain name consists of the Mark in its entirety and is identical except for the addition of a final letter "s" creating a plural form of Complainant's Mark. Complainant contends this misspelling is an intentional pluralization of the Mark on the part of Respondent as "typosquatting" and an obvious attempt to pass off the disputed domain name as Complainant's <wastequip.com> domain used to access the Official WASTEQUIP Website. Prior UDRP panels have held that a minor difference in spelling could be easily overlooked or considered a "typo" by consumers and serve as evidence of "typosquatting", which may also support violations under the second and third elements of the Policy discussed below. See *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) ("typosquatting" is where a registrant deliberately introduces slight deviations into marks for commercial gain).

The consensus view among previous UDRP panels is that "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". [WIPO Overview 3.0](#), section 1.9; see also *First American Financial Corporation v. VistaPrint Technologies Ltd*, WIPO Case No. [DCO2016-0008](#).

Finally, the Top-Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".co") typically adds no meaning or distinctiveness to a disputed domain name and is viewed as a standard registration requirement; as such it is disregarded under the paragraph 4(a)(i) analysis. Accordingly, the TLD of the disputed domain name here, ".com", does not avoid a finding of confusing similarity. See, [WIPO Overview 3.0](#), section 1.11; see also *Research in Motion Limited v Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#).

In light of the above, the Panel finds the disputed domain name is confusingly similar to the WASTEQUIP Mark in which Complainant possesses rights and Complainant has thus satisfied its burden under Paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Under the second element of the Policy, the complainant has to make out a *prima facie* case that the respondent does not have rights to or legitimate interests in the disputed domain name, upon which the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the dispute domain name. If the respondent fails to come forward with such evidence, a complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Paragraph 4(a)(ii) of the Policy also directs an examination of the facts to determine whether a respondent has rights or legitimate interests in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or interests.

The first example, under paragraph 4(c)(i), is where "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". Here, the annex to the Complaint shows Respondent is using the disputed domain name to resolve to an inactive website. Prior UDRP panels have held that use of a disputed domain name to resolve to a blank or inactive web page does not represent a *bona fide* use of the disputed domain name. See *Microsoft Corporation v. Charilaos Chrisochou*, WIPO Case No. [D2004-0186](#), see also *Fetzer Vineyards v. --*, WIPO Case No. [D2019-2285](#); [WIPO Overview 3.0](#), section 2.9.

Complainant has also asserted, and Respondent has not refuted, that the disputed domain name has been associated with email servers and Complainant submits into evidence MX records supportive of this assertion. Complainant alleges that due to prior instances of phishing scams or "business email attack", it is

highly likely that Respondent intends to use the typosquatting disputed domain name in an email scheme targeting Complainant.

Prior UDRP Panels have categorically held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1; see also, *Springer Nature Limited v. Registration Private, Domains By Proxy, LLC / Collections Springer Nature*, WIPO Case No. [D2020-0955](#).

While Complainant's evidence is not conclusive of the use of the disputed domain name, noting the active MX records and the nature of the disputed domain name, the Panel finds it more likely than not that there was an intent on the part of Respondent to confuse Internet users as to the association between the disputed domain name and the Complainant.

The second example, under paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the domain name. Complainant states that it has not authorized or licensed Respondent to use the WASTEQUIP Mark. Complainant also shows that Respondent is not commonly known by the disputed domain name because the original Respondent listed in the Whois record submitted with the initial Complaint is "Privacy service provided by Withheld for Privacy ehf" of Iceland. The Registrar disclosed the underlying registrant, "Brave Heart Bull, Brave Heart" of the United States, who has been added to the amended Complaint as a co-Respondent in addition to the original Respondent. Neither Respondent bears any resemblance to the disputed domain name whatsoever. Thus, there is no evidence in this case to suggest that Respondent is commonly known by the disputed domain name, that it is licensed or otherwise authorized to use Complainant's trademark, or that it has acquired any trademark rights relevant thereto. As such, this sub-section of the Policy is of no help to Respondent.

It is generally regarded as *prima facie* evidence of no rights or legitimate interests if a complainant shows that the disputed domain name is identical or confusingly similar to Complainant's trademark, that Respondent is not commonly known by the disputed domain name, and that Complainant has not authorized Respondent to use its mark (or an expression which is confusingly similar to its mark), whether in the disputed domain name or otherwise. See, *Roust Trading Limited v. AMG LLC*, WIPO Case No. [D2007-1857](#).

As to the third and final example under paragraph 4(c)(iii) of the Policy, there is no evidence that Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant's trademark. The disputed domain name does not resolve to an active website and therefore there is no *bona fide* offering nor any plausible fair use to which the disputed domain name may be put under the circumstances of this proceeding.

In light of the above, and with no Response or other submission in this case to rebut Complainant's assertions and evidence, the Panel finds that the facts of this case demonstrate that Respondent does not have any rights or legitimate interests in the disputed domain name. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, *e.g.*, *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#). Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

Complainant first contends that given the notoriety and well-known recognition after Complainant's approximately 33 years of use of the WASTEQUIP Mark before Respondent's registration of the disputed domain name, Respondent had actual knowledge of Complainant's rights when it registered the disputed domain name, which noting the nature of the disputed domain name shows bad faith registration.

Prior UDRP panels have held that in circumstances where a complainant's trademark is widely known, a respondent should have had knowledge of a complainant's rights at the time of registration of a domain name. The nearly identical nature of the disputed domain name with the Complainant's trademark, along with the configuration of the MX records, supports a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.2. See also *eBay Inc. v. Sunho Hong*, WIPO Case No. [D2000-1633](#) ("actual or constructive knowledge of Complainant's rights in the Trademarks is a factor supporting bad faith").

Prior UDRP panels have also held that a respondent's selection of a disputed domain name that comprises the complainant's mark in its entirety demonstrates a respondent's actual knowledge to support a finding of bad faith in registering and using the domain. See, e.g., *Lloyds Bank Plc v. Marc Wiese*, WIPO Case No. [D2015-0914](#); see also, *Heineken Brouwerijen B.V. v Mark Lott*, WIPO Case No. [D2000-1487](#).

Complainant's WASTEQUIP Mark is somewhat distinctive, the disputed domain name incorporates the mark in its entirety and is essentially identical to both Complainant's Mark and its <wastequip.com> domain name, except for a one letter "s" addition, an intentional misspelling representing the plural form of the Mark that could be easily overlooked by consumers as a typo or accepted as an affiliation with Complainant. With no explanation or submission from Respondent to dispute Complainant's assertions or the presented facts of this case, this Panel finds it reasonable to conclude that it is more likely than not that Respondent registered the disputed domain name with actual knowledge of Complainant's trademark rights in order to take unfair advantage of its similarity with the disputed domain name.

The Panel finds that Respondent's registration of the disputed domain name with awareness of Complainant and the WASTEQUIP Mark, and with the absence of its own rights or legitimate interests, in the circumstances of the case leads to a conclusion of registration in bad faith by Respondent. See *Royds Withy King LLP v. Help Tobuy*, WIPO Case No. [D2019-0624](#).

Complainant also contends under this element of the Policy that Respondent's single letter alteration amounts to typosquatting, the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors. Previous UDRP panels have found that if a respondent has engaged in typosquatting, that signals an intention on the part of the respondent to confuse users seeking or expecting the complainant, which is sufficient to establish registration and use in bad faith. See [WIPO Overview 3.0](#), section 1.9; See *ESPN, Inc., supra*; See also, *Barnes & Noble College Bookstores, Inc. v. Oleg Techino*, WIPO Case No. [D2006-1537](#).

While the evidence of MX records indicates an ability to send emails, the Panel notes that no evidence has been provided of the actual use of the disputed domain name for said purpose. However, as noted above, the typosquatting nature of the disputed domain name reflects an intent by Respondent to confuse Internet users expecting the Complainant. Moreover, Panels under the Policy have found that a respondent's non-use of a domain name does not necessarily prevent a finding of bad faith under the doctrine of passive holding. Under the circumstances of this proceeding, noting the nature of the disputed domain name, the Respondent's silence in light of the Complaint, and the implausibility of any good-faith use to which the disputed domain name could be put, the Panel finds that Respondent's passive-holding does not prevent a finding of bad faith.

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied paragraph 4(a)(iii) 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, <wastequips.com>, be transferred to Complainant.

*/Scott R. Austin/*

**Scott R. Austin**

Sole Panelist

Date: April 28, 2022