

ADMINISTRATIVE PANEL DECISION

CEMEX UK Operations Ltd. v. Privacy Service Provided by Withheld for Privacy ehf / Cargo Logistics Transportation Services, Cargo Logistics Transportation Services; South Coast Shipping Company, South Coast Shipping Company; and Cargo Logistics, Cargo Logistics Transportation Services

Case No. D2022-1445

1. The Parties

The Complainant is CEMEX UK Operations Ltd., United Kingdom (“UK”), represented by Stobbs IP Limited, United Kingdom.

The Respondents are Privacy Service Provided by Withheld for Privacy ehf, Iceland / Cargo Logistics Transportation Services, Cargo Logistics Transportation Services, South Coast Shipping Company, South Coast Shipping Company, and Cargo Logistics, Cargo Logistics Transportation Services, United Kingdom.

2. The Domain Names and Registrar

The disputed domain names <south-coast-company.com>, <south-coast-shipping.com>, and <south-coast-shipping-services.com> (each a “Disputed Domain Name” and collectively the “Disputed Domain Names”) are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 22, 2022. On April 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On April 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 25, 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 April 28, 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 May 10, 2022. On May 20, 2022, the Center received an unsolicited further filing for the Complainant. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2022. On May 20, 2022, the Center received an unsolicited further filing, which amongst other things, contained a request to add a further domain name to the proceedings. The Respondents did not submit any response. Accordingly, the Center notified the Respondents default on June 2, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on June 10, 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.

On July 14, 2022, the Panel issued a procedural order (the “Procedural Order”) in the following terms:

“Background

The Panel has reviewed the Complaint. No Response has been filed. The Panel notes that the Complainant’s case relies upon unregistered trademark rights in the names of two subsidiary or associated companies, specifically CEMEX UK Marine Limited (previously named South Coast Shipping Company Limited) (UK Company Number: 00119186) and South Coast Shipping Company (Crewing Services) Limited (UK Company Number: 00191854).

The Panel accepts the Complainant’s case that in principle unregistered trademark rights are sufficient to satisfy the requirement of paragraph 4(a)(i) of the Policy. The Panel is however at present doubtful that the information set out in the Complaint establishes that such rights subsist in the names relied upon, noting in particular the requirements set out in the guidance contained at section 1.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition. The Panel considers it appropriate to seek clarification of the Complainant’s case in this regard.

Order

The Complainant is granted until July 27, 2022 to file a Supplemental Statement, not exceeding 5000 words in length and dealing with the following matters.

Explain on what basis unregistered trade mark rights are said to subsist in the name South Coast Shipping Company Limited, given that (as the Panel understands it) use of that name was discontinued twenty years ago. Please identify relevant facts relied upon and if applicable identify any relevant case law supporting the Complainant’s case that such rights subsist.

Explain on what basis unregistered trade mark rights are said to subsist in the name South Coast Shipping Company (Crewing Services) Limited, given that (as the Panel understands it) that company provides intergroup services and does not trade with the public. Please identify relevant facts relied upon and if applicable identify any relevant case law supporting the Complainant’s case that such rights subsist.

Explain on what basis CEMEX UK Operations Ltd is the appropriate Complainant in the present Complaint as opposed to either or both of CEMEX UK Marine Limited (previously named South Coast Shipping Company Limited) (UK Company Number: 00119186) and South Coast Shipping Company (Crewing Services) Limited (UK Company Number: 00191854).

The Respondent is granted until July 30, 2022 to indicate whether it wishes to file anything in response to the Supplemental Statement. If it so indicates the Panel will give further directions as to the time for such filing, otherwise the Panel will render its decision by August 1 2022.”

On July 30, 2022, the Complainant filed a Supplemental Statement. The Respondents did not indicate they wished to file anything.

4. Factual Background

The Complaint goes into considerable detail as to the Complainant's position within a group that is ultimately owned by a Mexican multinational building materials company CEMEX S.A.B. de C.V., known as "Cemex". The Complaint sets out the history of the Complainant and its parent company and details of their activities worldwide. That material is in the opinion of the Panel of peripheral background relevance at best and the Panel does not propose to repeat it here. It suffices to note that the Complainant is a member of a major well respected multi-national group.

The Complainant relies upon unregistered trademark rights in the term "South Coast Shipping" and/or "South Coast Shipping Company" which it says two subsidiary companies within its group of companies possess – see further below.

The Disputed Domain Names were registered as follows:

<south-coast-shipping.com> on April 8, 2020;
<south-coast-shipping-services.com> on April 20, 2021; and
<south-coast-company.com> on September 22, 2021.

The Disputed Domain Names have been used as follows:

- <south-coast-shipping.com> resolves to a Google service site at "https://sites.google.com/view/south-coast-shipping-company/home", which is a website (the "Respondents' Website") which purports to be a website for "South Coast Shipping Company". It provides several pages of background corporate information about what is an entirely fictitious entity. Thus for example the "about" page contains the following text: - "SOUTH COAST SHIPPING COMPANY - REG COMPANY NO: UK00191854 - South Coast Shipping Company specializes in online consignment services for businesses, individuals, and non-profit groups. The original company opened in Warwickshire, England, in August 1923 with the aim of providing the highest level of service to our customers. South Coast Shipping Company makes it easy by doing all the work and sending the seller a check in the mail. We will pick up your merchandise at a place convenient to you and transport it to your desired location. We offer both private and commercial services, and we transport all types of merchandise including oversize Automobiles, Trucks, RVs, Military Merchandise, SUVs, Containers, Electronics, and Motorcycles. We provide a service that is built on service delivery. We do not compromise services by cutting corners. That being said, if you are able to find a logistics company that can match our quality of service and quote you a better price, we will beat it. Guaranteed. advertises logistics and warehousing services". The registered number that is quoted is in fact that of South Coast Shipping Company (Crewing Services) Limited. The Complainant has received various enquiries from the public relating to this Disputed Domain Name, including;
 - July 2020: telephone call received from a member of the public claiming he had paid the Complainant for shipment of an item which had not arrived.
 - January 2021: customer chasing their shipment from South Coast Shipping.
 - February 2021: inquiry from a customer asking the Complainant about their relationship with South Coast Shipping.
 - March 2021: call from member of the public inquiring if the Complainant sells and transports vehicles.
- <south-coast-company.com> resolves to a website "www.south-coast-company.com", which contains a background image (of a container ship) which is substantially the same as the background image on the landing page of the Respondents' website, a notice that the website is undergoing maintenance

and which lists a support email address with text that reads “For urgent matters to our customer service [...]@south-coast-shipping.com. Site will be available soon”.

- <south-coast-shipping-services.com> has not been used.

5. Parties’ Contentions

A. Complainant

The Complainant says it has unregistered trademark rights in the term South Coast Shipping. Its claim in this regard is discussed below.

It says the Respondents have no rights or legitimate interests in the term “South Coast Shipping”.

In consequence the Complainant alleges that the Disputed Domain Names were registered and are being used in bad faith. The Complainant says the Respondents are engaged in fraudulent activity which includes masquerading as “South Coast Shipping” in order to defraud members of the public. The Complainant says that potential customers were targeted by the Respondents from Facebook Marketplace and were fraudulently directed to the Respondents with regards to payment and arranging of shipment. It says that by using the Disputed Domain Names, the Respondents have intentionally attempted to attract, for commercial gain, Internet users to their website or other online location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of their website or location or of a product or service on their website or location.

B. Respondent

No response has been filed

6. Discussion and Findings

6.1 Procedural Matters – Consolidation

A complaint is allowed to proceed with multiple respondents when the domains or websites are under common control. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at para. 4.11.2 where it states: “Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.”

With reference to the above, the Panel agrees with the Complainant that the Disputed Domain Names are more likely than not under common control. Disputed Domain Names <south-coast-company.com> and <south-coast-shipping-services.com> are registered in the name of Cargo Logistics Transportation Services. Disputed Domain Name <south-coast-shipping.com> is registered in a different name but as indicated above the website linked to Disputed Domain Name <south-coast-company.com> lists a support email address at “[...]@south-coast-shipping.com” and features an alteration of a stock image used at the “south-coast-shipping.com” website. The Panel concludes it is more likely than not that the Disputed Domain Names are under common control and that consolidation would be fair and equitable to all Parties.

6.2 Procedural Matters – No response

The Panel notes that no communication has been received from the Respondents. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably

available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondents’ failure to file any Response. While the Respondents’ failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondents’ default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

6.3 Procedural Matters – Privacy service

The Panel also notes this is a case where one Respondent (“Privacy Service Provided by Withheld for Privacy ehf”) 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 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 it appropriate to record both the privacy service and all of the underlying registrants as the named Respondents.

6.4 Procedural Matters – Unsolicited Supplemental Filing

The Panel admits the Complainant’s unsolicited supplemental filing of May 20, 2022. It does so because it provides further information about how the Disputed Domain Names are being used which came to light after the date the Complaint was filed and is in the Panel’s opinion relevant. It also identifies a further domain name <south-coast-logistics.com> which also resolves to the Respondents’ Website and asks that his domain name be added to this Complaint.

The email in evidence with this submission provides an account of the nature of the Respondents’ activities, as follows:

“Hello,

I would like to buy a vehicle (audi) over the internet and the seller wants to send it to me via South Coast Shipping Company (and the Safe Exchange Protection Plan). Please find attached the Buyer Verification document. In the footer is a www link to Sout [sic] Coast Shipping Company's verification - <https://find-and-update.company-information.service.gov.uk/company/00191854> However, this verification is for your company (SOUTH COAST SHIPPING COMPANY (CREWING SERVICES) LIMITED Company number 00191854) so that's the story.”

6.5 Substantive Matters

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

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

A. Identical or Confusingly Similar to a trademark in which the Complainant has rights

The difficulty the Complaint faces is that it does not have any relevant registered trademark rights and the question of whether it has unregistered trademark rights is not straightforward. The Panel accepts the Complainant's case that in appropriate circumstances unregistered trademark rights may suffice to satisfy the requirements of the Policy. Whether the Complainant has such rights is however far from clear. The Panel issued the Procedural Order to seek further clarification of this issue.

[WIPO Overview 3.0](#) at section 1.3 addresses this issue as follows:

"1.3 What does a complainant need to show to successfully assert unregistered or common law trademark rights?

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (*e.g.*, consumer, industry, media) recognition, and (v) consumer surveys.

(Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services.)

Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning."

The difficulty here is that (as appears below) the Complainant has produced insufficient evidence that addresses these areas.

The Complainant says that "CEMEX UK Marine Limited is one of the Complainant's main trading entities. It was named South Coast Shipping Company Limited up until 2002. South Coast Shipping Company Limited traded throughout the United Kingdom under this name for nearly 50 years, building up trust and confidence in the name amongst the UK public until its re-branding to RMC Marine Limited in 2002 and then finally CEMEX UK Marine Limited in 2005".

Following the Procedural Order issued by the Panel, the Complainant provided further evidence about its claim to unregistered trademark rights. This was as follows:

- A brochure said to date from the 1980s which describes the business and activities of South Coast Shipping as "one of the leading companies supplying marine aggregates to the construction industry in Britain and Europe".

- A document entitled “2001 Review” produced by the Marine Aggregate Producers Association. This shows “South Coast Shipping Co” as being one of the eight members of a trade association which clearly represents companies supplying substantial quantities of materials to the construction industry.
- Accounts for the year to December 31, 2021, for South Coast Shipping Company (Crewing Services) Limited. These describe the principal activity of the company as providing “crew personnel services on behalf of CEMEX Marine (Guernsey) PCC Limited”. They show a turnover of some GBP 220,000 and a profit of GBP 16,882.
- An affidavit from a paralegal employed by the Complainant. The evidence in this affidavit is summarised as follows: “I confirm that the ‘SOUTH COAST SHIPPING’ brand was used extensively between 1956 to 2002, but crewing services continue to be offered by South Coast Shipping (Crewing Services) Limited to this day. This represents a continuation of the ‘SOUTH COAST SHIPPING’ brand name with the additional descriptive elements (‘Crewing Services’).” The affidavit also explains that South Coast Shipping (Crewing Services) Limited provides crewing services to CEMEX Marine (Guernsey PCC) Limited, which in turn provides crewing services to CEMEX UK Marine Limited (formally South Coast Shipping Company Limited).

In assessing the totality of this evidence provided by the Complainant, the Panel takes into account the following:

The names South Coast Shipping Company and South Coast Shipping (Crewing Services) Limited comprise ordinary English words which are not inherently distinctive. They may of course acquire distinctiveness through use.

There is no evidence from any third parties of sufficient public recognition of the names South Coast Shipping Company and/or South Coast Shipping (Crewing Services) Limited at any date.

Apart from the brochure mentioned above there is no evidence of substantive public advertising by either South Coast Shipping Company and South Coast Shipping (Crewing Services) Limited.

There is no evidence of the name South Coast Shipping Company having been used by the company now called CEMEX UK Marine Limited since its name was changed in 2002.

There is no financial evidence of any kind apart from the filed accounts for one year for South Coast Shipping (Crewing Services) Limited described above.

The Panel remains of the view that this evidence does not suffice to show unregistered trademark rights. The Panel accepts the Complainant’s case that English law as to the tort of passing off will protect relatively limited goodwill that has accrued on a small scale. The Panel also accepts that the evidence suffices to show that as at 2002, South Coast Shipping Company Limited will have been recognised as one of the companies involved in the specialised marine aggregates business and that persons, including customers involved in that business, will have recognised its name in that context. There is however, no evidence to support the proposition that such recognition survives some 20 years later, when the corporate name was changed in 2002 and there is no evidence of continued use of that name after that date. There is no evidence that the name South Coast Shipping (Crewing Services) Limited is used in any way outside the context of inter group provision of crewing services on (judging by the filed accounts) a relatively modest scale. In particular there is no evidence of enough public or trade recognition of that name, or any substantive use of it in publicity or advertising and there is not sufficient evidence of its current use as a source identifier of the Complainant’s services.

The Complainant however also relies on the fact of the Respondents’ use of the Disputed Domain Names is itself evidence that relevant unregistered rights exist. [WIPO Overview 3.0](#) addresses this as follows (section 1.3): “The fact that a respondent is shown to have been targeting the complainant’s mark (e.g., based on the manner in which the related website is used) may support the complainant’s assertion that its mark has

achieved significance as a source identifier.” The Panel takes the view that this approach may support a case where there is other evidence which is of a doubtful or marginal nature, but normally it would not constitute the sole evidence of unregistered rights. If that was not the case then the test would be entirely circular and any term used in a domain name could be said to support a finding of unregistered trademark rights – which is clearly not the intention of the Policy. This approach should be considered in light of the particular circumstances of a proceeding, and in the present case the Panel does not think, for the reasons explained above, that there is sufficient evidence of unregistered trademark rights subsisting as at the date of the Complaint. Hence it does not regard the use of the Disputed Domain Names enough to conclude or support a finding that such rights subsist.

Furthermore, the Panel is not convinced that the Disputed Domain Names are in any case being used to attract customers directly. In this regard, the facts of this case are unusual. There can be no doubt that the Respondents have appropriated details relevant to South Coast Shipping Company and South Coast Shipping Company (Crewing Services) Limited and included them in the content of the Respondents’ Website. The use of the latter company’s registered number puts that beyond doubt – in addition further text on the Respondents’ Website as to, for example, the supposed history of the entity operating the website, is clearly based on the Complainant’s companies history. However it does not seem to the Panel that the Respondents’ Website is itself designed to attract customers by confusion or to solicit business from such customers. The content of the website is a rather bland corporate website purporting to be that of a legitimate shipping company and providing background information about that company. It does not seek to solicit customers directly. Rather what seems to be happening is that the Respondents appear to be fraudulently obtaining customers by some other means, likely including Facebook Marketplace activity. That activity would appear to include reference to the Respondents’ Website. Presumably this is given as supporting material so that any prospective customer who checks it is given an impression of credibility and *bona fides*. Specifically it would appear from the email described above that the Respondents are including as part of their fraudulent activity “buyer Verification” material which includes reference to the Respondents’ Website. In essence the Respondents have created the Respondents’ Website in order to create a bogus corporate persona which they use to portray themselves as a *bona fide* credible company. It is not however, on the evidence, the Disputed Domain Names which are attracting the customers in the first place – it is whatever is taking place on Facebook Marketplace (or elsewhere) that is attracting the customers in question. The Panel does not have any evidence as to the detail of that activity or exactly how the Respondents are perpetrating the scam in question. Accordingly, the Panel does not think the use of the Disputed Domain Names supports the Complainant’s claim to having a public reputation in the term “South Coast Shipping Company”.

Accordingly the Panel concludes that the Complaint fails to establish that the Complainant has any relevant trademark rights. In the absence of such rights, the Complaint must fail.

B. Rights or Legitimate Interests

Given the findings above the Panel does not need to determine this issue. Had it been necessary to do so the Panel would have found that the Respondents have no rights or legitimate interests in the Disputed Domain Names.

C. Registered and Used in Bad Faith

Given the findings above the Panel does not need to determine this issue. Had it been necessary to do so the Panel would have found that the Respondents have registered and used the Disputed Domain Names in bad faith – they are manifestly engaged in dishonest fraudulent activity.

7. Further Complaint

The Panel recognises that its decision means the Complainant is unable to succeed against the Respondents notwithstanding their clearly fraudulent activity. If the Complainant is able to overcome its lack

of trademark rights, for example by obtaining a relevant registered trademark the Panel concludes that, if the Respondents' activity in question is continuing, then the Complainant should not be barred by this decision from filing a further complaint. In this context note that the requirement for a relevant trademark right is satisfied by a registered trademark which post-dates the activity complained of – see [WIPO Overview 3.0](#) – section 1.1.2. See also [WIPO Overview 3.0](#) section 4.18 as to a further complaint.

8. Decision

For the foregoing reasons, the Complaint is denied. In view of this decision the Panel does not need to determine the Complainant's request to add a further domain name to the Complaint.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: August 1, 2022