

ADMINISTRATIVE PANEL DECISION

Consumer Reports, Inc. v. Privacy service provided by Withheld for Privacy ehf / rafaqat ali, dubaijobs
Case No. D2022-1477

1. The Parties

The Complainant is Consumer Reports, Inc., United States of America (“United States”), represented by Cozen O’Connor, United States.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / rafaqat ali, dubaijobs, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <bestconsumerreports.org> is 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 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 25, 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 April 26, 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 29, 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 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2022. The Complainant submitted a corrected version of the amended Complaint on May 20, 2022. The Respondent’s informal communication was received by the Center on April 27, 2022. The Center notified the Commencement of Panel Appointment Process to the Parties on May 24, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on June 1, 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.

The Panel decided to accept the version of the amended Complaint submitted by the Complainant on May 20, 2022, which corrected a wrong reference to a different domain name in the amended Complaint (albeit with the correct disputed domain name in the Complaint initially submitted). All communications to the Respondent (including the communication by the Respondent itself) have included in their subject the correct indication of the disputed domain name, so it appears to the Panel that the Respondent must have been aware that the present proceeding relates to it and not to a different domain name. In fact, in response to the email of the Center providing the contact details for the registrant of the disputed domain name (before the wrong version of the amended Complaint was submitted), the disputed domain name was correctly identified in the subject line, and the Respondent said “I have this domain from 2 plus years”. In addition, the corrected version of the amended Complaint was submitted prior to the due date for Response, and the Respondent had an opportunity to comment on it or raise objections with its Response, which it chose not to do.

4. Factual Background

The Complainant is an independent non-profit consumer product testing and advocacy organization formed in 1936. It publishes a family of Consumer Reports publications in print and digital form, containing product testing and ratings, research, journalism, public education and advocacy. In November 2016, the Complainant changed its name from Consumers Union of United States, Inc. to Consumer Reports, Inc.

The Complainant is the owner of the following trademark registrations for the sign “CONSUMER REPORTS” (the “CONSUMER REPORTS trademark”):

- the United States trademark CONSUMER REPORTS with registration No. 672,849, registered on January 20, 1959 for goods in International Class 16, with first use in commerce in 1942; and
- the United States trademark CONSUMER REPORTS with registration No. 5,064,394, registered on October 18, 2016 for goods and services in International Classes 9, 35, and 41.

The Complainant is also the owner of the domain name <consumerreports.org> registered on June 20, 1997, which resolves to its official website.

The disputed domain name was registered on April 24, 2020. It resolves to a website containing various “best product” reviews and ratings of products sold on Amazon.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar to its CONSUMER REPORTS trademark in sight, sound, appearance, and commercial impression, and the only difference between them is that the disputed domain name includes the dictionary word “best”, which does not reduce the consumer confusion.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has not given the Respondent permission to use the CONSUMER REPORTS trademark or any domain name confusingly similar to this trademark and the Respondent is not commonly known by the disputed domain name. In the Complainant’s submission, the Respondent does not use the disputed domain name in connection with a *bona fide* offering of goods and services and is not making a

legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or tarnish the Complainant's trademark rights.

According to the Complainant, the Respondent's website at the disputed domain name contains what purport to be product reviews and ratings of consumer products, which is virtually identical to the Complainant's business. The Respondent's use of the disputed domain name appears to be a deliberate attempt to pass itself off as the Complainant and to trade on its fame as a means of attracting Internet users to its copycat website in order to lure them into buying the reviewed products on Amazon. The Complainant points out that the Respondent identifies itself as an "Amazon affiliate", which means that it receives a commission on every sale it directs to Amazon from its website.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent deliberately selected the Complainant's CONSUMER REPORTS trademark as a salient part of the disputed domain name to trade on this trademark for commercial gain, and a substantial number of users of the Respondent's website are likely to be confused about its source, sponsorship, affiliation, or endorsement. The Complainant submits that the Respondent makes money when a user clicks a review on the Respondent's website and is sent directly to Amazon in order to purchase the product.

B. Respondent

The Respondent did not submit a formal Response. In an informal email to the Center, it made the following statement:

"Dear,
I have this domain from 2 plus years; I have created brand and its register under my organization. This is some spam are wrong complain about this domain. Please ignore this Disputes. If you need any documents I can provide you.

Thanks Regards."

6. Discussion and Findings

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name in bad faith.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]."

The Respondent has, however, not submitted a formal Response or disputed the Complainant's contentions and evidence in this proceeding.

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the CONSUMER REPORTS trademark. In view of this, the Panel accepts that the Complainant has established its rights in this trademark for the

purposes of the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.org” gTLD of the disputed domain name.

The disputed domain name incorporates the CONSUMER REPORTS trademark in its entirety together with the word “best”. The CONSUMER REPORTS trademark remains easily recognizable in the disputed domain name. As discussed in section 1.8 of the [WIPO Overview 3.0](#), in cases where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the CONSUMER REPORTS trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because the Respondent has not been authorized by the Complainant to use the CONSUMER REPORTS trademark or to register a domain name that incorporates it, and the Respondent is not commonly known under the disputed domain name, and the Respondent is not carrying out a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. According to the Complainant, the Respondent attempts to impersonate the Complainant and its website offers product reviews and ratings which coincides with the Complainant’s activities. Thus, the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a formal Response. In its informal submission to the Center, it has only stated that it has registered the disputed domain name more than two years ago, that it has created a brand and has rights in it. The Panel understands from this statement that the Respondent maintains that it has rights in the disputed domain name that have arisen as a result of its registration and use.

The disputed domain name is confusingly similar to the CONSUMER REPORTS trademark and to the Complainant’s domain name <consumerreports.org>, which were registered many years earlier, and the evidence in the Complaint shows that the associated website offers reviews and ratings of various products sold on Amazon. According to the information posted on this website, when users purchase these products from Amazon, the Respondent may receive a commission. There is no disclaimer on the website for the lack of relationship between the Parties, and the Respondent does not deny the allegations of targeting raised by the Complainant.

Given the confusing similarity of the disputed domain name to the Complainant’s CONSUMER REPORTS trademark and to its domain name <consumerreports.org>, and the Complainant’s trademark registered decades earlier than the disputed domain name, and the offering of similar content to the Complainant’s content on the associated website to which the disputed domain name resolves, and the lack of disclaimer

for the lack of relationship between the Parties, these factors lead to the conclusion that the Respondent is likely to have engaged in an attempt to improperly capitalize on the goodwill associated with the CONSUMER REPORTS trademark by attracting consumers searching for the Complainant and misleadingly diverting them to the Respondent's website for commercial gain. In the Panel's view, such conduct does not appear as legitimate and does not give rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(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 trademark 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 trademark 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 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 your website or location or of a product or service on your website or location.”

The disputed domain name is confusingly similar to the CONSUMER REPORTS trademark and to the Complainant's domain name <consumerreports.org>, and was registered several decades later. It resolves to a website that offer services almost identical to those of the Complainant. There is however no disclaimer for the lack of relationship between the Parties. This may confuse Internet users that the Respondent's website and the services featured on it originate from the Complainant. The Respondent's website states that it may receive commission if users buy the products featured on it.

In view of the above and in the lack of a denial by the Respondent of the arguments and evidence brought forward by the Complainant, the Panel concludes that the Respondent must have been aware of the goodwill of the Complainant and its CONSUMER REPORTS trademark when it registered the disputed domain name, and that it is more likely that the Respondent registered and used it in an intentional attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's CONSUMER REPORTS trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of the services featured on it.

In view of all the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

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 <bestconsumerreports.org> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: June 13, 2022