

ADMINISTRATIVE PANEL DECISION

Lancaster Archery Supply, Inc. v. Privacy service provided by Withheld for Privacy ehf / ANALY GROUP
Case No. D2022-1858

1. The Parties

The Complainant is Lancaster Archery Supply, Inc., United States of America (“US” or “USA”), represented by Gibbel Kraybill & Hess LLP, USA.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / ANALY GROUP, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <lancastersarchery.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 May 23, 2022. On May 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 2022, the Registrar transmitted by email to the Center its verification response disclosing the 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 May 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 amendment to the Complaint on May 25, 2022.

The Center verified that the Complaint together with the amendment to the 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 27, 2022. In accordance with the Rules, paragraph 5, the due date for

Response was June 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 17, 2022.

The Center appointed Jane Lambert as the sole panelist in this matter on June 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

The Complainant is a major distributor of bows, arrows and other goods and services relating to archery. It supplies those goods and services through a shop and academy in Lancaster, Pennsylvania and its website at "www.lancasterarchery.com". The shop occupies 10,000 square feet and is equipped with live and virtual ranges where customers can try out products under expert supervision. Stock is kept at a warehouse with storage space of 80,000 square feet. The Complainant offers archery classes for students of all abilities and holds regular archery competitions. The Complainant has also established the Lancaster Archery Foundation.

The Complainant registered a device trademark registration consisting of an archer flexing a bow and arrow combined with the words LANCASTER ARCHERY SUPPLY for retail store, online and mail order services featuring archery, hunting and target equipment and supplies in class 35 with the United States Patent and Trademark Office under registration number 2997584 on September 20, 2005. Particulars of that registration are annexed to the Complaint.

In addition to its US mark, the Complainant claims "state" and "common law" trademarks. Photocopies of forms headed "LAS Trademark Filing", "LAS Inc. Corporate Registration" and "LAS Foundation Registration" are annexed to the Complaint marked "Annex 3 (b) (1)", "3 (b) (2)" and "3 (b) (3)" respectively but no particulars of the legislation under which those documents were filed or registered have been provided. There is even less detail about the common law trademarks that the Complainant claims but it is safe to surmise that the Complainant will have generated some goodwill in the words "Lancaster" and "Archery" in relation to bows, arrows, targets and the like by reason of its sales and marketing in at least one of its markets and that the use of those words by a third party could be actionable as passing off.

The Respondent has used the disputed domain name as the URL for a website, images of which appear in Annex 4, where similar goods to the ones of the Complainant are seemingly sold and/or offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant requests an order for the disputed domain name to be transferred to it on the following grounds:

- A. The disputed domain name was registered and is being used in bad faith;
- B. The Respondent has no rights or legitimate interests in the disputed domain name; and
- C. The disputed domain name is confusingly similar to trademarks or service marks in which the Complainant has rights.

In support of the first ground, the Complainant alleges that the Respondent is using "an identical domain name and trademark with the addition of the letter 's' to sell a limited number of the same goods as [the] Complainant

to fraudulently co-opt the Complainant's copyrights and trademarks". More specifically, the Respondent is accused of copying and pasting the trademarked and copyrighted product, blog, and "About Us" pages of the Complainant's website to populate the Respondent's website and unlawfully divert the Complainant's web patrons to the Respondent's site. The Complainant relies on the screen dumps in Annex 4.

The Complainant contends that registration in bad faith can be inferred from the similarity of the disputed domain name to its US service mark and also from the copying of matter from the Complainant's site. It alleges that at least one customer has been deceived into ordering products from the Respondent's website. The Complainant has reported the Respondent to the East Lampeter police as it believes that the Respondent has broken the criminal law.

The Complainant relies on much the same evidence to contend that the Respondent's website is wholly or largely unlawful and that therefore the Respondent can have no rights or legitimate interests in the disputed domain name.

In support of the third ground, the Complainant points to the similarity of the disputed domain name to its federal trademark and its trademarks that subsist under Pennsylvania statute and common law.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

The following provision was incorporated by reference into the contract for the registration of the disputed domain name:

"Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

- (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) you have no rights or legitimate interests in respect of the domain name; and
- (iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present."

A. Identical or Confusingly Similar

The Panel finds that the first element is present.

The US trademark mentioned above is a trademark in which the Complainant has rights. The disputed domain name incorporates the words "Lancaster" and "Archery". The only differences between that domain name and the trademark are the addition of the letter "s" after "Lancaster" and the omission of the word "Supply". The confusing similarity of the disputed domain name to the trademark is obvious as the main features of the trademark are recognizable within the domain name. See sections 1.7, 1.8 and 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

B. Rights or Legitimate Interests

The Panel holds that the second element is present.

Section 2.1 of the WIPO Overview contains the following guidance:

“While the overall burden of proof in UDRP proceedings is on the complainant, 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.”

The Complainant’s federal trademark and rights of action under state legislation and common law preclude any right or legitimate interest in the disputed domain name at least in the United States. Paragraph 4(c) of the Policy lists a number of circumstances that might indicate such a right or legitimate interest. None of them appears to apply in this case. If contrary to appearances, a right or substantial interest in the disputed domain name does subsist, it is up to the Respondent to assert it. The Respondent has had ample opportunity to prove such right or legitimate interest but has failed to do so.

C. Registered and Used in Bad Faith

The Panel is satisfied that the third element is and at all material times has been present.

Paragraph 4 (b) of the Policy lists a number of circumstances which if found to be present shall be evidence of the registration and use of a domain name in bad faith. One of those circumstances is as follows:

“by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel has already found the disputed domain name to be confusingly similar to the Complainant’s trade mark. One of the Complainant’s customers has already been misled by the disputed domain name’s similarity to the mark into doing business with the Respondent in the belief that it was dealing with the Complainant. Accordingly, all the requirements of that paragraph have been met.

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 <lancastersarchery.com> be transferred to the Complainant.

/Jane Lambert/

Jane Lambert

Sole Panelist

Date: July 1, 2022