

ADMINISTRATIVE PANEL DECISION

Accolade Wines Australia Limited v. linda goodenough
Case No. D2022-4859

1. The Parties

The Complainant is Accolade Wines Australia Limited, Australia, represented by Demys Limited, United Kingdom.

The Respondent is linda goodenough, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <acoladewines.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 19, 2022. On December 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 20, 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 20, 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 December 20, 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 January 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 25, 2023. The Respondent did not submit any response. On January 12 and 16, 2023 a third party contacted the Center regarding the claimed unauthorized use of its contact details in relation to the disputed domain name. Accordingly, the Center notified the Parties with a Commencement of Panel Appointment Process email on February 6, 2023.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on February 13, 2023. 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 wine producer, located in Australia and the United Kingdom. It sells wine in 140 countries and claims being the fifth largest wine company in the world. In support of its activities, the Complainant operates a website, which is hosted under the domain name <accolade-wines.com>.

For the purpose of the Complaint, the Complainant relies in particular on the European Union Trade mark registration ACCOLADE WINES No. 009697079, registered on July 14, 2011.

The disputed domain name was registered on December 12, 2022 through a privacy service. The identity of the Respondent was disclosed by the Registrar in the course of the proceeding. The Respondent provided false contact details.

Immediately after its registration, the disputed domain name was used by the Respondent for a phishing scam, which is detailed in the Complaint. The Respondent created spoof emails impersonating the Complainant, and included in its correspondence two email addresses of the Complainant's staff, that incorporated the disputed domain name. The email was sent with the heading "Important notification – Accolade Wines – Change of Bank Account Details" and included many details relating to the Complainant, such as logos of many of its wines. Annexed to the email was a letter impersonating an Australian based bank and providing details on the alleged bank account of the Complainant. The Complainant further explains that "The target of this email would reasonably be expected to "reply to all" when responding. While the spoofed email to (Name Redacted 1) at the Complainant's own domain name would not be received by the Respondent, the cc'ed emails to (Name Redacted 2) and (Name Redacted 3) at the disputed domain name would be received by the Respondent. This would allow the Respondent to continue the fraudulent correspondence through the disputed domain name via either or both the (Name Redacted 2) and (Name Redacted 3) addresses. The Complainant observes that the phishing email claims that the Complainant's bank account has "been closed" and that payments from the Complainant's supplier should, instead, be sent to a new bank account, presumably the Respondent's. Details of this bank account were attached to the email in a PDF file.

5. Parties' Contentions

A. Complainant

The arguments of the Complainant on the three elements of the Policy can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name reproduces its earlier trademark ACCOLADE WINES, save the voluntary substitution of the letter "i" by the letter "l" (for the sake of clarity, "l" being the letter "L" in lower case). Hence, the disputed domain name is confusingly similar to its trademark.

On the second element of the Policy, the Complainant indicates that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name and does not own any trademark incorporating the terms ACCOLADE WINES or ACCOLADE WLNES, and does not use them. Besides, the disputed domain name has not been subject to a legitimate noncommercial or fair use. Instead, the Respondent has used it in connection with a phishing scam. Finally, the Complainant adds that "the disputed domain name does not resolve to an active website, but a default hosting website provided by the registrar which, the Complainant contends, constitutes passive

holding and, as such, the disputed domain name has not been used in connection with a *bona fide* offering of goods or services”.

On the third element of the Policy, the Complainant asserts that the Respondent registered and is using the disputed domain name in bad faith. The Respondent intends to attract users by creating a likelihood of confusion with the Complainant and its trademark, through an act of typosquatting. Also, the Respondent has operated a phishing scam, with emails sent to suppliers. Also, as additional indicia of bad faith conduct, the Complainant notes that the Respondent has used passively the disputed domain name in bad faith, and has used a privacy service to conceal his/her identity.

B. Respondent

The Respondent did not reply to the Complainant’s contentions. However, the Center received emails from a third party who declared that it had been the victim of unauthorized using of its physical contact details, and that it has no relation to the disputed domain name.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (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 disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain names are identical or confusingly similar to a trademark or a service mark in which it has rights. The first criterion is perceived primarily as a standing requirement for the Complainant.

The Complainant has shown that it holds rights over the trademark ACCOLADE WINES.

The disputed domain name reproduces the Complainant’s trademark ACCOLADE WINES, save for the substitution of the letter “i” by the letter “l” (“L” in lower case letter). This substitution does not alter the global perception of the domain name, which remains confusingly similar to the Complainants’ trademark, particularly visually.

Hence, the first criteria element set out in paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent’s rights or legitimate interests in the disputed domain name. These circumstances are:

- i. before any notice of the dispute, the Respondent’s use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- ii. the Respondent (as individuals, businesses, or other organizations) has been commonly known by the disputed domain names, in spite of not having acquired trademark or service mark rights; or

iii. the Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prime facie* case against the Respondent which has not been commonly known by the disputed domain name and is not affiliated with the Complainant nor has it been licensed or otherwise permitted to use any of the Complainant's trademarks or to register a domain name incorporating any of those trademarks.

Much to the contrary, it appears from the evidence submitted by the Complainant that the Respondent is using the disputed domain name to create spoof emails, passing itself off as the Complainant's Chief Executive Officer and seeking to mislead recipients of its emails. Such conduct is fraudulent and is not a *bona fide* offering of goods or services.

Additionally, the Panel finds that the nature of the disputed domain name, incorporating the Complainant's mark almost in its entirety with a sole common misspelling (substituting of the letter "i" for the letter "l"), points to an intention to confuse Internet users expecting the Complainant.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trademark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) [the respondent has] registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location.

Indisputably, the Respondent has registered and used the disputed domain name in bad faith, here. In particular, the Respondent has:

- Reproduced identically the Complainant's trademark, save for the substitution of the letter "i" by the letter "l", which is hardly noticeable visually. This voluntary act of typosquatting is particularly useful to mislead users in email scams;
- Used the disputed domain name for a very sophisticated phishing scam, described in the description of facts above, in order to obtain payments from suppliers of the Complainant;
- Provided false contact details, resulting in a totally unrelated third party having to claim that it had nothing to do with this proceeding.
- Not replied to the Complainant's assertions.

The fact that the disputed domain name does not resolve to active website does not alter the Panel's findings (see section 3.3 of the [WIPO Overview 3.0](#)).

Accordingly, the third criteria element set out in paragraph 4(a) of the Policy is also satisfied.

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, <accoladewlnes.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: February 27, 2023