

## **ADMINISTRATIVE PANEL DECISION**

IP86, LLC v. Name Redacted

Case No. D2022-4896

### **1. The Parties**

The Complainant is IP86, LLC, United States of America (“United States”) represented by Osha Bergman Watanabe & Burton LLP, United States.

The Respondent is Name Redacted.<sup>1</sup>

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

The disputed domain name <epconcommunities.com> is registered with Google LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 21, 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, Contact Privacy Inc. Customer 7151571251, and contact information in the Complaint. The Center sent an email communication to the Complainant on December 22, 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 May 5, 2023.

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”).

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<sup>1</sup> The Respondent appears to have used the name of a third party when registering the disputed domain name. Considering the potential identity theft, the Panel has redacted Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the circumstances of this case.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2023. The Center received email communications from a third party on January 4 and 13, 2023.

The Center appointed William F. Hamilton as the sole panelist in this matter on March 2, 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 provides residential building construction services, franchise services, building inspections, and training about operating a construction business.

The Complainant owns numerous United States Patent and Trade Office registrations for the marks EPCON and EPCON COMMUNITIES the earliest of which is Registration No. 3,079,215 for EPCON COMMUNITIES, dated April 11, 2006 (collectively referred to herein the "Marks") and Registration No. 5,190,678 for EPCON, dated April 25, 2017.

The Complainant uses the domain name <epconcommunities.com> as one of its principal websites.

The disputed domain name was registered on November 23, 2022. The disputed domain does not resolve to an active website.

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

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

The Complainant asserts the disputed domain name is confusingly similar to the Marks because the disputed domain name wholly adopts the EPCON mark and varies from the EPCON COMMUNITIES mark by merely the changing the order of the letter "i" and "n" the in the Complainant's mark and eliminates the space between the two words in the mark to compose the disputed domain name. The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, never operated a business under the disputed domain name, has not advertised the disputed domain name, and never engaged in any *bona fide* commercial activity in connection with the disputed domain name. The Complainant asserts that the Respondent knew or should have known of the Mark with a reasonable investigation and registered and used the disputed domain name in bad faith.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions. On January 4 and 13, 2023, the Center received email communications from a third party claiming receipt of the Center's written communication, but claiming no awareness of or connection to the disputed domain name. The third party disclosed its name and physical address, which were identical to those disclosed by the Registrar as belonging to the Respondent, but stated that the disclosed email and phone number associated with the Respondent were not associated with the third party.

#### **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical 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 name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

#### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is confusingly similar to the Complainant's Marks.

The disputed domain name is confusingly similar to the Complainant's Marks because the disputed domain name wholly incorporates the EPCON mark and only differs from the EPCON COMMUNITIES mark by inverting the letters "i" and "n" in the mark and eliminating the space between the two words in the mark to compose the disputed domain name. The slight change in spelling of a protected trademark in a disputed domain name does not prevent a finding of confusing similarity. 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9.

The Top-Level Domain of the disputed domain name, in this case ".com", may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1. *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#).

The Complainant has met its burden under paragraph 4(a)(i) of the Policy.

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

The Panel finds on the evidence presented that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has specifically disavowed providing the Respondent with permission to use the disputed domain name or the Marks. There is no evidence that the Respondent has conducted any *bona fide* business under the disputed domain name or is commonly known by the disputed domain name. The Complainant has established a *prima facie* case in its favor, which shifts the burden of production on this point to the Respondent.

The Respondent, however, has failed to come forth with any evidence showing any rights or legitimate interests in the disputed domain name. The disputed domain name appears never to have resolved to an active website, and the disputed domain name will likely confuse unsuspecting Internet users into believing the disputed domain name will resolve to a website sponsored or affiliated with the Complainant.

The facts and circumstances presented to the Panel demonstrate that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following non-exhaustive scenarios:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 the respondent's documented out-of-pocket costs directly related to the domain name; or

- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on the respondent's website or location.

The Panel finds on the evidence presented that the disputed domain name was registered and is being used in bad faith.

A simple Internet search, normally undertaken before registering a domain name, would have disclosed the Complainant's Marks. The disputed domain name wholly incorporates the EPCON mark and changes the EPCON COMMUNITIES mark only by inverting the letters "i" and "n" in the mark and eliminating the space between the two words in the mark. This intentional inversion creates an inference of intent by the Respondent to trick and deceive unsuspecting Internet users into believing that the disputed domain name would resolve to a website sponsored or affiliated with the Complainant. On balance, the Panel finds that the Respondent was likely aware of the Complainant's well-known Mark when registering and using the disputed domain name to attract unsuspecting Internet users to the Respondent's website.

The inactive status of the disputed domain name is irrelevant as the continued registration of the disputed domain name constitutes a threat hanging over the Complainant. Internet visitors may incorrectly draw negative inferences about the Complainant when seeing that the disputed domain name resolves to an inactive website. Moreover, it appears that the Respondent provided fraudulent information upon registration of the disputed domain name, illustrating the Respondent's bad faith conduct as regards the disputed domain name. Under the circumstances of this case and the doctrine of passive holding, the fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), sections 3.3 and 3.2.1.

The Complainant has met its burden under 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 names <epconcommunities.com> be transferred to the Complainant.

*/William F. Hamilton/*

**William F. Hamilton**

Sole Panelist

Date: March 15, 2023