

ADMINISTRATIVE PANEL DECISION

Entertainment Earth, LLC v. David Kaye

Case No. D2022-5031

1. The Parties

The Complainant is Entertainment Earth, LLC, United States of America (the “United States”), represented by Stradling Yocca Carlson & Rauth, United States.

The Respondent is David Kaye, United States.

2. The Domain Name and Registrar

The disputed domain name <entertainmentearth.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 December 30, 2022. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 3, 2023, 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 Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 4, 2023, 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 January 6, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 13, 2023.

The Center appointed Kathryn Lee as the sole panelist in this matter on February 17, 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 an online retailer and wholesaler in the field of toys and collectibles which has used the name "Entertainment Earth" since the mid-1990s. The Complainant is the owner of the "ENTERTAINMENT EARTH" trademark registered on September 30, 2003 (United States Trademark Registration Number 2,769,256). The Complainant's official website is at domain name <entertainmentearth.com>.

The Respondent appears to be an individual with an address in the United States.

The disputed domain name was registered on December 5, 2022 and resolves to a webpage with pay-per-click links.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the ENTERTAINMENT EARTH trademark in which the Complainant has rights. Namely, the Complainant asserts that the disputed domain name consists of "entertainmentearlh" which is nearly identical to the Complainant's trademark ENTERTAINMENT EARTH with the only difference being that the "t" in "earth" is replaced with an "l", and that the change is so minimal that a casual observer would not notice the difference.

The Complainant confirms that it has not authorized or licensed rights to the Respondent in any respect and contends that the Respondent has no rights or legitimate interests in the disputed domain name. In fact, the Complainant explains that the Respondent used the disputed domain name in furtherance of fraud; a customer of the Complainant received an email from an email address generated from the disputed domain name impersonating one of the Complainant's account specialists seeking transfer of funds into a particular bank account. The customer believed the email to be from the Complainant's account specialist, and wired a significant amount of money to the Respondent's bank account.

Finally, the Complainant contends that the disputed domain name was registered and used in bad faith. The Complainant contends that the Respondent registered the disputed domain name with actual knowledge of the Complainant and its mark and with the specific objective of impersonating the Complainant and the Complainant's employee to engage in fraudulent activities, which constitutes bad faith registration. The Complainant also contends that the Respondent's use of the disputed domain name in furtherance of wire fraud is indisputably bad faith use. In addition, the Complainant asserts that the disputed domain name displays pay-per-click links which capitalizes on the reputation and goodwill of the Complainant's mark and mislead Internet users.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated with supporting evidence that it has rights to the trademark

ENTERTAINMENT EARTH. As for the disputed domain name, it consists of “entertainmentearlh” which has replaced a letter “t” with a letter “l”. As a lower case “t” is quite similar in terms of appearance to a lower case “l” at a quick glance, the disputed domain name is nonetheless confusingly similar to the Complainant’s trademark. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9, establishes that “[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”. Accordingly, the disputed domain name is confusingly similar to the Complainant’s trademark.

For the reasons mentioned above, the Panel finds that the first element has been established.

B. Rights or Legitimate Interests

On the basis of the present record, the Panel finds that the Complainant has made the required allegations to support a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* basis has been established, the Respondent carries the burden of demonstrating his rights or legitimate interests in the disputed domain name. However, the Respondent in this case has chosen to file no substantive response to these assertions by the Complainant, and there is no evidence or allegation in the records that would warrant a finding in favor of the Respondent on this point.

Further, the Respondent used the disputed domain name in an apparent phishing scheme in which the Respondent passed himself off as the Complainant’s employee and solicited payment to his own bank account. The use of a domain name for illegal activity can never confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1.

Additionally, the disputed domain name is linked to a parking page with pay-per-click links. Such use trades on the reputation and goodwill associated with the Complainant’s trademark and does not represent a *bona fide* offering of goods or services. See, e.g., [WIPO Overview 3.0](#), section 2.9.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

C. Registered and Used in Bad Faith

The Panel finds that there is sufficient evidence to find bad faith in this case.

First and foremost, the Respondent used the disputed domain name to perpetuate fraud by sending an email from the disputed domain name to the Complainant’s client, soliciting funds to be transferred to what would appear to be the Respondent’s own bank account. The email from the Respondent was disguised as an email from the Complainant’s employee in order to deceive the recipient into believing that the email actually came from the Complainant’s employee. Using a domain name in a fraudulent activity is manifestly evidence of bad faith registration and use. See [WIPO Overview 3.0](#), section 3.1.4 and section 3.4.

Further, considering the fame of the Complainant and its mark, and the use of the disputed domain name in perpetuating fraud, it is quite clear that the Respondent registered the disputed domain name with knowledge of the Complainant’s trademark and the intent to benefit financially from the disputed domain name and the fame and reputation associated with the Complainant’s trademark.

For the reasons given above, the Panel finds that the third and final element has been sufficiently established.

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

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: March 6, 2023