

## **ADMINISTRATIVE PANEL DECISION**

**Darden Concepts, Inc. v. Larry Williams, USBIZ**  
**Case No. D2023-0411**

### **1. The Parties**

Complainant is Darden Concepts, Inc., United States of America, represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States of America.

Respondent is Larry Williams, USBIZ, United States of America.

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

The disputed domain name <dardenrestuarants.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 29, 2023. On January 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details for the disputed domain name.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on February 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 28, 2023.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on March 6, 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

Complainant, including through its commonly controlled affiliated entities,<sup>1</sup> owns registrations for the word trademark DARDEN and DARDEN RESTAURANTS on the Principal Register of the United States Patent and Trademark Office (USPTO), including for DARDEN, registration number numeral 3766853, registration dated March 30 2010, in international class (IC) 43, covering restaurant services; for DARDEN RESTAURANTS, registration number 2217020, registration dated January 12, 1999, in IC 35, covering promoting the sale of gift certificates for use with incentive award programs, and; for DARDEN RESTAURANTS, registration number 2240043, registration data April 20 1999, in IC 42, covering restaurant services.<sup>2</sup>

Complainant owns and operates more than 1,850 restaurants, including those operating under the Olive Garden and LongHorn Steakhouse brands that are distinct from the DARDEN and DARDEN RESTAURANTS trademarks. Darden Restaurants, Inc, is a publicly traded company listed on the New York Stock Exchange, with sales in 2022 approximating USD 5 billion. Complainant employs 180,000 “team members” in the United States. Complainant maintains a commercial presence on the Internet, including at <darden.com>, which domain name was registered in 1997.

According to the Registrar’s verification, Respondent is registrant of the disputed domain name.

According to a Whois domain lookup provided by Complainant, the record of registration of the disputed domain name was created on September 15, 2022. There is no indication on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name.

Respondent has used the disputed domain name to create and transmit an email message appearing to originate from the “Chief Supply Chain Officer” of Complainant using the disputed domain name as the domain identifier of the sender. The falsely attributed email is directed to a restaurant food service supplier, and it purports to seek information regarding whether Complainant has an existing electronic account with the recipient supplier, or alternatively whether such an account could be established. The third-party recipient replied to Respondent without disclosing such information or offering to open an account.

In addition, Respondent has redirected the disputed domain name to Complainant’s website at <darden.com>.

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

#### 5. Parties’ Contentions

##### A. Complainant

Complainant alleges that it owns rights in the trademarks DARDEN and DARDEN RESTAURANTS, and that the disputed domain name is confusingly similar to those trademarks.

Complainant argues that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Complainant has prevailed in two virtually identical UDRP proceedings; (2) Complainant has never

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<sup>1</sup> As used in this decision, “Complainant” refers to the entity Darden Concepts, Inc. and its affiliated commonly controlled entities.

<sup>2</sup> Complainant alleges ownership of additional trademark registrations. These need not be addressed by the Panel as the listed registrations are sufficient to establish relevant trademark rights.

assigned, granted, licensed, sold, transferred or in any way authorized Respondent to use Complainant's trademarks in the disputed domain name or otherwise; (3) Respondent's use of a typographical error in the disputed domain name suggests an intent to confuse Internet users seeking Complainant; (4) using the disputed domain name to operate a phishing or business email compromise scam does not establish rights or legitimate interests; (5) redirecting the disputed domain name to Complainant's website does not establish rights or legitimate interests, and; (6) to the best of Complainant's knowledge Respondent has not been commonly known by nor has it acquired any trademark or service rights in the disputed domain name.

Complainant contends that Respondent registered and is using the disputed domain name in bad faith because: (1) the Panel may rule on the same grounds as those used in two virtually identical UDRP proceedings; (2) using the disputed domain name as part of a phishing or business email compromise scam constitutes bad faith; (3) redirecting the disputed domain name to Complainant's website evidences Respondent's bad faith; (4) using a typographical error in the disputed domain name to confuse Internet users who are expecting to find Complainant evidences bad faith; (5) Complainant has long-established rights in its trademarks and the disputed domain name is intended to be associated with Complainant, and; (6) Complainant's DARDEN and DARDEN RESTAURANTS trademarks were registered long before the disputed domain name.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, *e.g.*, Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery of the Complaint to Respondent was successfully completed. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

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

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

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

Complainant has provided substantial evidence of rights in the trademarks DARDEN and DARDEN RESTAURANTS, including by registration at the USPTO and through use in commerce (see Factual Background *supra*). Respondent has not challenged Complainant's assertion of trademark rights. The Panel determines that Complainant owns rights in the trademarks DARDEN and DARDEN RESTAURANTS.

The disputed domain name directly and fully incorporates Complainant's DARDEN trademark, adding the term "restuarants". The disputed domain name directly and fully incorporates Complainant's DARDEN RESTAURANTS trademark, except that in the disputed domain name there is a typographical error in the second term. Direct and full incorporation of Complainant's trademarks in the disputed domain name is sufficient to establish confusing similarity within the meaning of the Policy. Neither addition of the typographically inaccurate term "restuarants" to the trademark DARDEN, nor the typographical error in that same term when compared to DARDEN RESTAURANTS, prevents a finding of confusing similarity between the disputed domain name and either of Complainant's trademarks.

The Panel determines that Respondent has established rights in the trademarks DARDEN and DARDEN RESTAURANTS, and that the disputed domain name is confusingly similar to those trademarks.

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

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above in section 5.A, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name.

Respondent has not replied to the Complaint, and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

Respondent's use of the disputed domain name as the sender domain in an email falsely purporting to originate with Complainant and seeking confidential business information from a third-party supplier is characteristic of an attempt to defraud. Such use of the disputed domain name does not establish rights or legitimate interests.

Respondent's redirection of the disputed domain name to Complainant's commercial website is likely intended to persuade recipients of fraudulent email that Respondent is associated with Complainant. As such, and absent some alternative explanation from Respondent, such redirection does not establish rights or legitimate interests.

Respondent's use of the disputed domain names does not otherwise manifest rights or legitimate interests.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain name.

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

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states that "for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith". These include, "(iv) by using the 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".

Complainant's DARDEN and DARDEN RESTAURANTS trademarks were registered and used long before Respondent registered the disputed domain name. Respondent's use of Complainant's trademarks and other branding in an email falsely purporting to originate from Complainant is clear evidence that Respondent was aware of Complainant and its trademarks when it registered the disputed domain name.

Complainant's use of Respondent's trademarks in the sender domain for transmitting an email falsely impersonating Complainant and seeking valuable commercial information from a third-party supplier evidences bad faith. The typographical error in in the sender domain is unlikely to be noticed by an email recipient. The Panel in the absence of other explanation assumes that Respondent's redirection of the disputed domain name to Complainant's commercial website forms part of its attempt at deception. By using disputed domain name, Respondent has intentionally attempted to attract for commercial gain Internet users to Respondent's online location by creating confusion with Complainant's trademarks.

Respondent has not provided any information that might argue against a finding of bad faith.

The Panel determines that Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) 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 name, <dardenrestuarants.com>, be transferred to Complainant.

*/Frederick M. Abbott/*

**Frederick M. Abbott**

Sole Panelist

Date: March 20, 2023