

ADMINISTRATIVE PANEL DECISION

Cobb-Vantress, Inc. v. Angela Gilfillan
Case No. D2023-0942

1. The Parties

The Complainant is Cobb-Vantress, Inc., United States of America (“U.S.”), represented by Reed Smith LLP, U.S.

The Respondent is Angela Gilfillan, U.S.

2. The Domain Name and Registrar

The disputed domain name <cobvantress.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 March 2, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on March 2, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint.

The Center sent an email communication to the Complainant on March 16, 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 March 21, 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 March 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2023.

The Center appointed Stefan Naumann as the sole panelist in this matter on April 20, 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 U.S. livestock breeding company that operates globally, and notably owns the <cobbvantress.us> domain name, and the U.S. trademark COBB-VANTRESS (n° 1967870) registered on April 16, 1996, for products in class 31 of the Nice Classification for classifying goods and services, as well as several COBB trademarks in various jurisdictions, including Canada (n° TMA684939) registered on March 29, 2007 for products in class 31 of the Nice Classification.

The Complainant has submitted Whois printouts of the domain names and copies of the registrations of the trademarks it owns, as well as evidence of its history, reputation and use of the trademarks and domain names in the U.S. and other countries.

The disputed domain name was registered on January 16, 2022. The Complainant indicates and provides evidence that the disputed domain name is inactive and that it is being used as a part of a fraudulent email scheme impersonating the Complainant.

The Respondent, initially a privacy protection service provider, was disclosed as an individual, with an address in the U.S., and the Complainant amended its complaint accordingly.

Since disclosure of the underlying registrant occurred, the Complainant amended its complaint and the record contains no indication of a relationship between the privacy protection service and the underlying registrant beyond the provision of privacy or proxy registration services, the Panel finds it appropriate that the case should proceed against the underlying registrant as the Respondent.

5. Parties' Contentions

A. Complainant

The Complainant asserts that its COBB-VANTRESS trademark and COBB trademarks are well known, that the Respondent has no permission from the Complainant to use the Complainant's trademarks or apply for a domain name with the Complainant's trademarks, that the Respondent is not commonly known by and does not have a right or legitimate interest with respect to the disputed domain name in connection with a *bona fide* offer of goods and services, and that the Respondent registered and is using the disputed domain name in bad faith.

The Complainant submits evidence that the Respondent has used the disputed domain name in connection with phishing emails that reference the Complainant's trademarks as well as the name of an employee of one of the Complainant's foreign subsidiaries, and were sent to the Complainant's employees to direct them to transfer payments to an unknown bank account, and argues that the fraudulent use of the disputed domain name to perpetrate email scams constitutes bad faith use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to succeed in its claim, the Complainant must demonstrate that all three elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name must be identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent must have no rights or legitimate interests with respect to the disputed domain name; and
- (iii) the disputed domain name must have been registered and used in bad faith.

Paragraph 15(a) of the Rules provides that a panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Furthermore, paragraphs 10(b) and 10(d) of the Rules provide that a panel shall ensure that the parties are treated with equality and shall determine the admissibility, relevance, materiality, and weight of the evidence.

Paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, the Rules, a panel shall draw such inferences therefrom as it considers appropriate.

In the present matter, the Respondent did not reply to the Complainant's contentions.

While the Respondent's failure to respond does not automatically result in a decision in favor of the Complainant, the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see [WIPO Overview 3.0](#), paragraph 4.3).

A. Identical or Confusingly Similar

The test for the first element requires a reasoned but straightforward comparison between the Complainant's trademark(s) and the disputed domain name.

The Complainant's trademarks are recognizable in the disputed domain name (DELETED). The disputed domain name combines the COBB-VANTRESS trademark, with the omission of one letter "b" and the hyphen, and the generic Top-Level Domain ("gTLD") ".com". The Complainant argues that this is a clear instance of typo-squatting.

For the purpose of assessing identity or confusing similarity in the present matter, the Panel considers that the omission of one letter "b" and the hyphen is an obvious misspelling of the Complainant's COBB-VANTRESS trademark, which remains recognizable in the disputed domain name (see [WIPO Overview 3.0](#), paragraph 1.9).

The Panel is thus satisfied that the disputed domain name is confusingly similar to the Complainant's trademark for the purposes of the Policy.

B. Rights or Legitimate Interests

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, and finds no indication in the evidence that the Respondent could claim rights or legitimate interests of her own in the term "cobvantress". Nor do the record or the circumstances of the case point to any circumstances that may support a rights or legitimate interests defense. The Respondent has chosen not to reply to the Complaint. Since the Respondent has no permission from the Complainant and chose not to respond on the merits, her registration of the disputed domain name, based on the evidence

provided by the Complainant and absent any indication of circumstances that may support a rights or legitimate interests defense, is without rights or legitimate interests. This finding is further supported by the use of the disputed domain name for fraud, which can never confer rights or legitimate interests upon the Respondent (see [WIPO Overview 3.0](#), section 2.13).

The Panel therefore finds that in the present case the Respondent does not have any rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant argues that the Respondent knew or could not have ignored the Complainant's well-known COBB-VANTRESS trademark, that the registration of the disputed domain name allows a finding of bad faith registration and that the use of the disputed domain name for fraudulent purposes constitutes bad faith use of the disputed domain name.

The disputed domain name resolves to an inactive site.

As discussed in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), the relevant issue in determining whether passive holding constitutes bad faith use is whether under the circumstances of a case, it can be held that a respondent is acting in bad faith. In *Telstra Corporation Limited v. Nuclear Marshmallows*, *supra*, the panel noted that:

"The question that then arises is what circumstances of inaction (passive holding) other than those identified in paragraphs 4(b)(i), (ii) and (iii) can constitute a domain name being used in bad faith? This question cannot be answered in the abstract; the question can only be answered in respect of the particular facts of a specific case. That is to say, in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the Administrative Panel must give close attention to all the circumstances of the Respondent's behavior. A remedy can be obtained under the [Policy] only if those circumstances show that the Respondent's passive holding amounts to acting in bad faith."

Previous panels have held that the use of a domain name for illegal activities such as phishing, or impersonation/passing off, are considered evidence of bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

In the present matter, the Complainant submitted clear albeit partially redacted evidence of the alleged illegal activity. The Panel notes that the disputed domain name in addition closely approximates Complainant's domain name <cobbvantress.us>.

Here, the record notably shows that:

- (i) the Respondent used a privacy protection service and is located in the U.S.,
- (ii) the term "Cobb-Vantress" is a coined or fanciful term that could not have been chosen because of a dictionary or common meaning,
- (iii) the Respondent was well aware of the Complainant's trademarks since she used them in emails to the Complainant's employees seeking to misdirect payments, and was apparently aware of the Complainant's business dealings, invoicing and of certain of the Complainant's and the Complainant's subsidiaries' employees' functions,
- (iv) the Respondent registered a domain name that fully incorporates the Complainant's COBB-VANTRESS trademark with a common, obvious or intentional misspelling and closely resembles the Complainant's <cobbvantress.us> domain name to attempt to mislead the Complainant's employees, and

(v) the Respondent used the disputed domain name for fraudulent purposes, specifically to misdirect payments.

In the present case, the Panel is thus persuaded that the facts of this case as reflected in the limited record available in a UDRP proceeding unambiguously support a finding that the Respondent's registration and use of the disputed domain name was in bad faith.

D. Reverse Domain Name Hijacking

For the sake of completeness, the Panel therefore finds that the facts, evidence and possible inferences in the present matter do not support a finding of reverse domain name hijacking.

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 <cobvantress.com> be transferred to the Complainant.

/Stefan Naumann/
Stefan Naumann
Sole Panelist
Date: May 2, 2023