

ADMINISTRATIVE PANEL DECISION

Addsecure AB v. John Vermeulen

Case No. D2023-1381

1. The Parties

The Complainant is Addsecure AB, Sweden, represented by AWA Sweden AB, Sweden.

The Respondent is John Vermeulen, Netherlands, represented by Penrose, Netherlands.

2. The Domain Name and Registrar

The disputed domain name <addsecure.care> is registered with Metaregistrar BV (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 30, 2023. On March 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 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 (Registrant is REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 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 April 5, 2023.

On April 4, 2023, the Center informed the parties in Dutch and English, that the language of the registration agreement for the disputed domain name is Dutch. In its amended Complaint filed on April 5, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 April 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2023. The Respondent sent an email communication to the Center on May 1, 2023, requesting for a four-day extension of the Response due date. On May 2, 2023, the Center

notified the Parties that the new due date for the Response was May 6, 2023, pursuant paragraph 5(b) of the Rules. The Response was filed with the Center on May 5, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on May 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 describes itself as a “leading European provider of secure IoT connectivity solutions with a focus on secure critical communications and secure data” including end-to-end safety solutions for elderly living at home, namely the provision of safety devices, alarm monitoring and alarm management. The Complainant also provides incident response solutions to help emergency services prevent and respond quickly to public or personal emergencies. The Complainant operates a website at the domain name <addsecure.com>.

The Complainant owns a number of trade marks for ADDSECURE, including International Registration No. 1450768, registered on September 12, 2018, in classes 9, 37, 38, 42, and 45.

The Respondent owns a software business known as “CareBuilder”, which founded in 1999 in the Netherlands, and which now has additional offices in the United Kingdom, Bulgaria, and Spain. It is not clear whether the Respondent himself actually trades under that name, or whether he does so through a separate legal entity. In any event, nothing turns on the distinction and references to below to “the Respondent” should be taken as including any other entity involved in conducting this business.

According to the Respondent, the Respondent’s platform is used “for communication and health care services in housing, home automation, social- and health care industries” and it “connects relevant stakeholders and integrates the caretaking, communication and monitoring through (mobile/tablet) applications, sensors, smart- and IoT wearables”.

The disputed domain name was registered on June 8, 2021.

As of March 3, 2023, the disputed domain name redirected to a website at “www.carebuilder.com”, which was branded with a CAREBUILDER logo and included the following business description:

“... CareBuilder has worked with organisations providing award-winning care and support to the elderly and people with a range of disabilities, including learning difficulties, dementia and other cognitive as well as physical disabilities.

We offer Software as a Service (SaaS)-based portals & apps, smart devices and intelligent matching of caregivers and care receivers to enable effective (remote-first) support, increase efficiency and teamwork in care & housing and improve quality of life.”

The Respondent’s offering was said to include a “Real-time Care Response Centre” delivering “remote first support” amongst other things, as well as “Unique Matching Software” that “[e]nriches alerts from care receivers with relevant information: urgency, location and required qualifications” and “Lifestyle Monitoring” to “[m]onitor customer’s activity, fall detection, step-count & heart-rate and receive alerts in case of a suspected emergency”.

The Respondent did not reply to the Complainant’s cease and desist letter that was sent by email to the Registrar on March 3, 2023.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain name because: it is being redirected to a competing website; the Complainant could find no registered rights to ADDSECURE in official online trade mark databases; and the Respondent is using a privacy service to conceal his identity.

The Complainant contends that the disputed domain name was registered and is being used in bad faith because: the Complainant's earliest registered trade marks (dating back to 2015) significantly predate the disputed domain name; the Complainant's distinctive ADDSECURE mark has had a longstanding worldwide presence and has been registered in many countries; the Respondent's use of the disputed domain name for a competitive website shows that the Respondent aims to profit by misleading customers seeking the Complainant's mark; and the Respondent could have selected from many other domain names to drive traffic to his website.

B. Respondent

The following is a summary of the Respondent's contentions.

The disputed domain name is not confusingly similar to the Complainant's mark. The ".care" extension, which is integral to the disputed domain name and should not be disregarded, creates distinctiveness, unlike say ".com" or ".nl". Furthermore, users will only find the Respondent's website by typing the exact disputed domain name into the browser's address bar as the Respondent does not advertise for the keywords "addsecure" or "addsecure.care".

Use of the Complainant's mark in the disputed domain name does not automatically constitute trade mark infringement because registration of the domain name does not amount to use in the course of trade.

There is no likelihood of confusion because the disputed domain name links directly to <carebuilder.com>, which is clearly related to "CareBuilder" services.

The Complainant primarily claims that the Respondent is trying to take unfair advantage of the Complainant's trade marks, but the Complainant does not own a "well-known" trade mark for the purposes of European Union trade mark law.

The Respondent has rights or legitimate interests in respect of the disputed domain name. Use of a privacy service is lawful and justified on personal privacy grounds.

The disputed domain name has not been registered or used in bad faith.

The Respondent legitimately registered the disputed domain name on a "first come, first served" basis in 2021.

Distinctive domain name extensions such as ".care" are expensive. If the Respondent were targeting the Complainant, the Respondent would have used a cheaper extension, and one closer that used by the Complainant, such as ".com" or ".nl".

The Parties are not competitors. Their businesses are completely different. The Complainant's assertion that both provide "end-to-end safety solutions for elderly living at home" is out of context because the Complainant merely provides and installs safety and alarm devices (*i.e.*, hardware) and optionally the related

services such as monitoring and alarm management (e.g., telecare). These products – and to a minor extent, services – are completely different from the Respondent's business and service offering.

The Respondent did not intend to disrupt the Complainant's business per the Respondent's submissions above regarding the lack of any likelihood of confusion. The Respondent does not intend to create a likelihood of confusion with the Complainant's mark or any affiliation with the Complainant.

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Dutch. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English because the facts that the Respondent's website is in English, and the Respondent's business has offices in the United Kingdom, show that the Respondent understands English.

The Respondent did not comment on the Complainant's request for the language of the proceeding be English but sent email communications, and filed its Response, in English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the Respondent argues that the ".care" Top-Level Domain ("TLD") should be taken into account, and is sufficient to differentiate the disputed domain name from the trade mark, the practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD, including with regard to "new gTLDs" (such as ".care"). The meaning of such TLD may, however, be relevant to panel assessment of the second and third elements. For example, in cases where the combination of the mark and the TLD signals potential legitimate co-existence or fair use, and where the related website content supports such inference, panels would tend to focus their inquiry on the second element. On the other hand, in cases where the TLD corresponds to a complainant's area of trade so as to signal an abusive intent to

confuse Internet users, panels have found this relevant to assessment under the third element. [WIPO Overview 3.0](#), section 1.11.2. See further below.

Similarly, the additional issues raised by the Respondent under the first element, such as the Respondent's alleged intent to provide its own legitimate offering of goods or services without trading off the Complainant's reputation and the likelihood or otherwise of confusion, are decided under the second and third elements. Panels view the first element as a threshold test concerning a trade mark owner's standing to file a UDRP complaint, *i.e.*, to ascertain whether there is a sufficient nexus to assess the principles captured in the second and third elements. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Panel considers that the record of this case reflects that:

Before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2. See further below under section 6C as to why the Panel considers that the Respondent has not used the disputed domain name for a *bona fide* offering.

The Respondent (as an individual, business, or other organisation) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site 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 web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

In the present case, the Panel notes the following:

1. While the Complainant has supplied limited supporting evidence, the Respondent does not dispute the Complainant's contentions as to the extent of the Complainant's reputation and activities. Furthermore, the Google searches produced by the Respondent appear to indicate that the Complainant does indeed operate a substantial international business under the mark ADDSECURE including via a website at "www.addsecure.com", as well as "www.addsecure.nl" in the Netherlands, where the Respondent is located.
2. The Respondent asserts that the parties are not competitors and asserts that their businesses are "completely different". However, it seems reasonably clear to the Panel from the Parties' respective descriptions of their offerings, as set out in detail in section 3 above, that both provide products and services designed to be used for monitoring of the elderly living at home. The Respondent dismisses any such similarity as "out of context", for reasons that are not entirely clear, but the Respondent does not appear to dispute that, at the very least, their respective businesses bear a degree of overlap.
3. In any event, and crucially, the Respondent does not deny that it was aware of the Complainant's mark when registering the disputed domain name.
4. Nor does the Respondent explain precisely why it selected the disputed domain name which exactly reproduces the Complainant's mark – and which it is noted redirects to the Respondent's site at "carebuilder.com". To the Panel, the combination of "add" and "secure" does not seem an obvious descriptive choice.
5. The Panel does not consider that the fact that the disputed domain name includes the ".care" TLD in any way mitigates any likelihood of confusion with the Complainant's mark. The Complainant's services are also deployed in the care sector, and the Panel therefore considers the selection of this TLD signals an abusive intent to confuse Internet users in accordance with the Panel's comments in section 6A above. For that reason, the Panel also rejects the Respondent's contention that the Respondent would necessarily have selected a TLD such as ".com" or ".nl" if it sought to target the Complainant, and that its use of the relatively expensive ".care" TLD is an indicator otherwise; the Panel also notes that the Complainant holds both of those TLD variants corresponding to its mark (so they would be unavailable for the Respondent to seek to register in any case).
6. The Panel is sceptical of the Respondent's apparent claim that the disputed domain name does not, and will never, appear in advertising or search results, and that users will only ever be able to access the disputed domain name by directly typing it into a browser address bar. In any case, the Respondent has not explained to the Panel why users seeking the Respondent's service independently of the Complainant would have any reason to type the disputed domain name into the browser, particularly if the Respondent does not propose to promote it in any way. On the contrary, it seems to the Panel that, if anyone were to take this unlikely step, it would be the Complainant's customers, given the correlation between the disputed domain name and the Complainant's mark and domain name <addsecure.com>.
7. The Respondent claims that there is no likelihood of confusion because the disputed domain name immediately redirects to a website related to the Respondent's "CareBuilder" services. However, the disputed domain name is effectively identical to the Complainant's trade mark and domain name, and it therefore carries a high risk of implied affiliation with the Complainant – see section 2.5.1 of [WIPO Overview 3.0](#). Even if the Respondent had provided a reason for the Panel to think that any confusion

would be dispelled on a user's arrival at the Respondent's website (e.g., if there was a prominent disclaimer), this would not have cured the bad faith intent to attract traffic based on the registration of a domain name that identically reproduces the Complainant's mark and which redirects to the Respondent's site where its own different branding is used. Paragraph 4(b)(iv) of the Policy is concerned with the intentional attracting of Internet users for the purpose commercial gain, which the Panel considers is the case here.

8. The Respondent is wrong to imply that it derives some sort of legitimacy simply because it registered the disputed domain name on a "first come, first served" basis. Otherwise, the entire concept of the UDRP would be undermined. The issue here is not who "got to" a particular domain name first but, rather, with whether the Respondent registered and used the domain name with a bad faith motive vis-à-vis the Complainant.
9. The Panel has disregarded the Respondent's assertions regarding trade mark law. The Panel is not concerned with trade mark infringement, which is a different concept to bad faith under the Policy.
10. Finally, the Panel would add that it has not taken the Respondent's use of a privacy service into account in its bad faith finding as there are recognised legitimate uses of such services. [WIPO Overview 3.0](#), section 3.5.

Based on the available record, the Panel finds the third element of the Policy has been 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, <addsecure.care>, be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: June 1, 2023