

ADMINISTRATIVE PANEL DECISION

Dentless, LLC v. Dent Guys, Inc., and Bill Swartwout, Beaches and Towns Network, Inc.

Case No. D2023-1547

1. The Parties

Complainant is Dentless, LLC, United States of America (“United States”), internally represented.

Respondents are Dent Guys, Inc., and Bill Swartwout, Beaches and Towns Network, Inc., United States.

2. The Domain Name and Registrar

The disputed domain name <dentless.com> (the “Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2023. On April 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Dent Guys, Inc) and contact information in the Complaint. The Center sent an email to Complainant on April 12, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on the same day.

The Center verified that the Complaint together with the amendment to 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 April 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. The Response was filed with the Center on May 17, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on May 25, 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.

On June 6, 2013, the Panel issued Procedural Order No. 1, which stated:

“The Panel orders that the Parties submit to the Center, on or before June 15, 2023, the following:

1. Complainant shall explain and support its allegation that, “on information and belief,” Respondent actually acquired the Domain Name “on or about November 2013.”
2. Complainant shall provide evidence to suggest that its DENTLESS trademark was sufficiently well-known by November 2013 that Respondent would have been aware of the mark.
3. Complainant shall state when it first became aware that the Domain Name was being used by another party and why it waited until 2023 to take action in connection with the Domain Name.
4. Complainant shall explain why it chose to register the domain name <dentless.net> instead of (or in addition to) the Domain Name (<dentless.com>) when it began using DENTLESS as a trademark.
5. Respondent shall state when he first acquired the Domain Name, and support that statement with evidence.
6. Respondent shall state whether he was aware of the DENTLESS trademark at the time he registered the Domain Name, and shall state whether he conducted any kind of Internet search or trademark search for the term “dentless” before registering the Domain Name.
7. Respondent shall support his statement that “dentless” is a term used in the automobile dent repair industry in a generic sense, *i.e.*, not as a source identifier for Complainant’s services.

Each Party may respond to the other Party’s supplemental submissions on or before June 22, 2023.

The Panel reserves the right to raise additional questions or seek additional information.”

Respondent submitted a response to Procedural Order No. 1 on June 15, 2023, and Complainant did so on June 18, 2023. Neither Party availed itself of the opportunity to reply to each other’s responses to Procedural Order No. 1.

4. Factual Background

Founded as a Texas corporation in 2011, Complainant asserts that is “provides an alternative to expensive and sometimes long process repair methods for door dings and minor body damage and utilizes perfected methods of Paintless Dent Removal” for automobiles.

Complainant holds a registered trademark for DENTLESS with the United States Patent and Trademark Office (“USPTO”), Reg. No. 4,231,218, registered on October 23, 2012, in connection with “automobile body repair and finishing for others; automobile repair and maintenance; automobile detailing,” with a January 1, 2011, date of first use in commerce.

Complainant operates a commercial website at the domain name <dentless.net>. The site describes Complainant’s various services and contains nine customer reviews, all evidently taken from Complainant’s Facebook page.

The Complaint contains no evidence about the scope of Complainant’s operations (for instance, whether

nationwide or localized), or about the extent of the DENTLESS trademark's renown (such as the extent of Complainant's sales, or number of customers, or unsolicited media coverage discussing the services provided under the DENTLESS mark). Even in response to the Panel's Procedural Order No. 1, quoted above, Complainant provided no such evidence. Instead, Complainant invoked the "constructive notice" doctrine, a rule under United States federal trademark law that a mark registered on the USPTO's Principal Register is deemed to be known, *i.e.*, "constructively known," by all in the United States.

The Domain Name was first registered on January 14, 2003. Complainant alleges, "on information and belief," that Respondent "bought disputed domain on or about November 2013, after Complainant trademark's registration." According to Respondent, it bought the domain Name on April 24, 2017.

The Domain Name resolves to <dentguys.com>, a commercial website where Respondent promotes its automobile dent repair services. The "Our Mission" page of Respondent's website states:

"Since 1999, the Dent Guys have worked tirelessly to perfect the art of painless dent repair, while providing world-class quality service and industry leading turnaround times. From small towns to large cities, we continue to grow, creating and maintaining relationships that grant us the ability to work across the globe."

The site features a link: "Find a PDR [painless dent removal] technician near you."

The website does not use the term "dentless," either as a purported trademark or in a descriptive sense.

In response to Procedural Order No. 1, Respondent stated that it conducted no trademark search at the time he acquired the Domain Name, "due to such widely used industry terminology and the domain had existed for 14 years prior leading to believe there would be no dispute."

To support this statement, Respondent provided a screenshot from a search conducted at "www.opencorporates.com" for the term "dentless, LLC." That search yielded 18 companies (two inactive) scattered about the United States, including Complainant, that have "Dentless" and "LLC" in their company name. Aside from Complainant, there are two firms also known as "Dentless LLC" – Complainant's exact name.

By way of further purported support, Respondent also provided a series of responses to an Internet blog (at Dent World) asking if others had experienced the use of the word "dentless" as a generic term describing the painless dent repair industry in general, and the responses were overwhelmingly on the affirmative.

5. Parties' Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

The substance of Respondent's position is quoted below:

"Our company has been an active player in the painless dent removal industry since 1999, years prior to the Complainant registering their trademark in 2012. We serve a vast clientele, repairing over 5000 vehicles annually with a team of 30 employees and over 300 subcontractors at multiple locations nationwide and internationally. The term 'dentless', integral to our trade, has been a common industry vernacular long before its trademarking. This is a term used by the general public and there's been numerous shirts and stickers with the saying 'Yes I do that Dentless stuff.'"

"The domain dentless.com that was originally created in 2003 (9 years before the trademark) was purchased

in good faith and in line with the industry's language, without any intent to infringe upon any existing or future trademarks. It was neither used maliciously nor with intent to create confusion or mislead consumers.”

“Furthermore, I have made good a faith attempt to resolve this dispute amicably. I personally reached out to Mr. Thomas, offering to sell the domain at a mutually agreeable price days ago. Regrettably, he was unwilling to entertain that under any dollar amount.”

“At this juncture, I wish to propose a compromise: to guarantee not to forward this domain to any pointless dent removal company, and instead, to place it up for sale. This domain, akin to a 'cyber location', was purchased by me in good faith. I firmly believe it is unjust for someone to claim this possession without reasonable compensation.”

“In conclusion, I assert my rights to the domain dentless.com based on its purchase in good faith, its use in line with industry language, and its non-malicious use. I am prepared to defend my rights to this domain in a fair and transparent manner, respecting the principles of fair competition and intellectual property rights.”

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark DENTLESS through registration demonstrated in the record. The Panel also concludes that the Domain Name is identical to that mark.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel need not address this issue, given its holding below on the bad faith finding under the third element.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in bad faith:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes, on this record, that Complainant has failed to carry its burden of proving that Respondent registered the Domain Name in bad faith under the Policy. Although Complainant holds a trademark registration for DENTLESS, that does not automatically resolve the question of bad faith registration of the Domain Name. It is axiomatic that, under the UDRP, a complainant must show that the respondent more likely than not had the complainant’s mark in mind when registering the disputed domain name. Complainant cites to a single UDRP case from 2000 (*Alloy Rods Global, Inc. v. Nancy Williams*, WIPO Case No. [D2000-1392](#)) for the proposition that the doctrine of constructive notice is enough to satisfy the “bad faith registration” requirement of a UDRP case. Notwithstanding that decision, innumerable UDRP decisions since 2000 have rejected the notion that the doctrine of constructive notice supplants the requirement of actual notice in UDRP cases. Trademark infringement under the United States Lanham Act is not coterminous with bad faith registration and use under the UDRP.

Given the apparently widespread use of the term “dentless” in the auto repair business, it would have behooved Complainant to provide some evidence of the trademark’s actual renown. Complainant chose not to do so – even despite the Panel issuing a Procedural Order, and hence the Panel is left with some evidence that “dentless” is a common term in the auto repair industry (it is, again, used in the name of many such companies), and no evidence that Complainant’s registered DENTLESS trademark is so well known that Respondent more likely than not was aware of it and sought to unfairly trade off of it.

In sum, the Panel cannot conclude, on the record provided (even as supplemented) and on a balance of probabilities, that Respondent more likely than not was aware of and sought to unfairly target Complainant’s mark when acquiring the Domain Name. For this reason, the Complaint must fail.

Complainant has not established Policy paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, the Complaint is denied.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: June 27, 2023