

ADMINISTRATIVE PANEL DECISION

E Group BV v. Justian de Frias
Case No. D2023-5032

1. The Parties

The Complainant is E Group BV, Netherlands (Kingdom of the), internally represented.

The Respondent is Justian de Frias, Cayman Islands, self-represented.

2. The Domain Name and Registrar

The disputed domain name <ecosavers.com> 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 December 6, 2023. On December 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 9, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 11, 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 December 11, 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 December 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2024. The Response was filed with the Center on December 30, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on January 5, 2024. 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 Dutch company. No information concerning the nature of the Complainant's business is provided in the Complaint, and, regarding the extent of its business, the Complainant simply states as follows, without providing any further detail: "Complainant is a worldwide operating company with a turnover of EUR 3.8 million (USD 4.1 million) in 2022." Nevertheless, Panel viewed the Complainant's website at "www.ecosavers.nl", which indicates that the Complainant trades in "energy saving consumer products".

The Complainant owns European Union Trade Mark Registration No. 006752893 ECOSAVERS and device in classes 7, 9, and 11, with a registration date of December 10, 2008.

The disputed domain name was registered on March 2, 2003. Per the Response, it was acquired by the Respondent at auction in April 2019. Presently, the disputed domain name resolves to a parking page displaying pay-per-click ("PPC") advertisements.

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 registered and has used the disputed domain name in bad faith as the Respondent's primary intention for the disputed domain name was to sell it to the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name.

B. Respondent

The Respondent contends that the Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Respondent contends that many third parties unrelated to the Complainant use the terms "ecosaver" or "ecosavers", and the Complainant has no monopoly over these terms. The Respondent further contends that it purchased the disputed domain name for use in the Cayman Islands, where the Respondent is resident and where the Complainant has no trade mark rights, in order to offer an initiative for schools and companies to "go green, stop using single use plastics and care more for the environment".

6. Discussion and Findings

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.

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 Complainant's registered mark is recognisable within the disputed domain name. To the extent that the design element of the Complainant's mark is incapable of representation in domain names, this element is disregarded for purposes of assessing identity or confusing similarity. [WIPO Overview 3.0](#), section 1.10. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Given the Panel's findings on bad faith, it is not necessary to consider the second element of the Policy.

C. Registered and Used in Bad Faith

The evidence in the case file as presented does not indicate that the Respondent's aim in acquiring the disputed domain name was to profit from or exploit the Complainant's trade mark, for the following reasons.

The verbal component of the Complainant's ECOSAVERS mark is comprised of two dictionary words that appear to be largely descriptive of the Complainant's business. The verbal component of the Complainant's mark is therefore not particularly distinctive inherently, and the Complainant has presented no evidence showing that its mark has acquired distinctiveness or a reputation through use. In cases involving marks that are comprised of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning ([WIPO Overview 3.0](#), section 3.2.2). The Response as well as the Panel's own limited, independent Internet searches reveal that there are many third parties unrelated to the Complainant who make use of the terms "ecosaver" or "ecosavers". This is further borne out by the Panel's search of the TMView international trade mark database, showing many third-party trade marks comprising "ecosaver" or "ecosavers" in many jurisdictions.

The Complainant has not provided evidence showing its reputation and the extent of its business. Thus, it cannot be said that the Complainant's mark is well-known and that a presumption of bad faith applies, or that the Complainant's mark is unique to it. Furthermore, there is no evidence that the Complainant's mark has been used or is known at all in the Respondent's jurisdiction of the Cayman Islands, and there is nothing in the case file directly indicating that the Respondent was aware or should have been aware of, or targeted the Complainant.

Yes, the Respondent offered the disputed domain name to the Complainant for sale after the Complainant lodged the Complaint. However, based on the evidence put before the Panel by the Parties the Respondent had not done anything up until that point to offer it to the Complainant, or to target the Complainant, in the intervening four years since the Respondent acquired the disputed domain name. The Respondent's version that the COVID-19 pandemic intervened to make his planned project difficult, and that his listing of the disputed domain name for sale was because he was no longer certain that his planned project would be viable, could be a ruse but at the same time, and noting the burden is on the Complainant, is not implausible especially given the broader circumstances of this case.

In light of the absence of any even circumstantial evidence of targeting, the descriptive nature of the disputed domain name, and the widespread use by third parties of corresponding terms, the Respondent's version that he intended to use the disputed domain name for a bona fide environmentally friendly business offering, consistent with the descriptive meaning of the disputed domain name, is at least as plausible as the Complainant's version that the Respondent acted in bad faith to target the Complainant. Given that the burden is on the Complainant to prove its case, the Complainant has failed to establish the third element of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: January 17, 2024