

ADMINISTRATIVE PANEL DECISION

Lifeware SA v. Chris Smith
Case No. D2024-0556

1. The Parties

The Complainant is Lifeware SA, Switzerland, represented by M. ZARDI & CO. SA, Switzerland.

The Respondent is Chris Smith, United States of America.

2. The Domain Name and Registrar

The disputed domain name <lifeware.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 7, 2024. On February 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 2024, the Registrar transmitted by email to the Center its verification response:

- (a) confirming that the disputed domain name is registered with it;
- (b) confirming that the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Name Redacted For Privacy) and contact information in the Complaint.

The Center sent an email communication to the Complainant on February 12, 2024, 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 February 12, 2024.

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 February 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 11, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on March 25, 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 company incorporated in Switzerland in 1998. Since then it has been providing computer software to provide a complete, fully integrated, web-based solution for the management of life insurance products. It does so from its main website at "www.lifeware.ch", having registered the domain name in 1998.

In addition to its headquarters in Bioggio, Switzerland, according to Annex 10 to the Complaint the Complainant also has offices in Zurich, Switzerland, Luxembourg, Barcelona, Spain, Hamburg, Germany, Bolzano, Italy, and Chennai in India.

In addition to the domain name <lifeware.ch> which it registered in 1998, the Complainant has registered a number of other domain names in country code Top Level Domains ("ccTLDs"). The earliest being <lifeware.li> which was registered on March 15, 2000. The next being <lifeware.de> which was registered on August 13, 2018. There are also registrations for <lifeware.es> and <lifeware.it>, both of which were made on February 27, 2023. The registration date of <lifeware.lu> is not available, however, the earliest capture by the Wayback Machine is 23 December 2016. Each of these domain names redirects to the Complainant's main website at <lifeware.ch>.

The Complainant is the owner of the following two registered trademarks:

- (a) Swiss Registered Trademark No. 475092, LIFEWARE and device, which has been registered since February 23, 2000, in respect of a range of services in International Classes 36, 38 and 42 including insurance services and computer programming services; and
- (b) Swiss Registered Trademark No. 802907, LIFEWARE and butterfly device, which has been registered since August 22, 2023, in respect of a wide range of relevant goods and services in International Classes 9, 35, 38 and 42.

The Complainant is also the applicant for the registration of European Union Trademark, No. 018916453. This application was filed on August 22, 2023, in respect of goods and services in International Classes 9, 35, 38 and 42 and is still pending.

The disputed domain name was registered on July 23, 1995.

Overtime, it has resolved a variety of different webpages as illustrated by Annexes 11 to 23 to the Complaint. When the Complaint was filed, the disputed domain name resolved to a Runtime Error page.

In 1995, the website captured by the Wayback Machine involved "Lifestyle Software and Sacis" promoting the sale of electronic titles such as Betty Crocker's "New Choices Cookbook". As characterized by the Complainant the websites captured by the Wayback Machine:

- (a) in 1995, resolved to a website including various content, almost non intelligible, totally unrelated to IT services, software and development of software;

- (b) In December 2000, resolved to a website showing unreadable content and broken links;
- (c) in June 2004, resolved to a simple landing page displaying “LIFEWARE | TEK”;
- (d) in 2008 and 2010, resolved to a broken landing page;
- (e) in 2012, resolved to a page showing an HTTP Error 404;
- (f) in 2014 and 2017, resolved to a page titled “Lifeware” with a promotional link to “Cortana – a glimpse into the future of artificial intelligence”, and a statement “It seems we can’t find what you are looking for. Perhaps searching can help” then showing a search bar;
- (g) in 2019 and 2021, resolved to page “web.archive.org My site is launching soon”; and
- (h) there were no captures by the Wayback Machine in 2022.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the 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.

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 trademark 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 Complainant has proven ownership of the two registered trademarks in Switzerland for LIFEWARE.

In undertaking the comparison of the disputed domain name to the trademark, it is permissible in the present circumstances to disregard the generic Top-Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.1.

It is also usual and appropriate in this case to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. [WIPO Overview 3.0](#),

section 1.10. The figurative elements of the Complainant's trademarks are not so dominating that the verbal element cannot be considered an essential or important part of the trademarks in this case.

Disregarding the ".com" gTLD, therefore the disputed domain name consists solely of the Complainant's registered trademark. Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Registered and Used in Bad Faith

In the circumstances of this case it is appropriate to consider the third requirement under the Policy next.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

In the present case, the evidence shows that the disputed domain name was registered in 1995 some three years before the Complainant was incorporated and started carrying on business.

Given the length of time the disputed domain name was registered before the founding of the Complainant, there does not appear to be any basis to infer that the original registrant registered the disputed domain name to take advantage of the Complainant's plans to start a business under the LIFEWARE trademark. See [WIPO Overview 3.0](#), section 3.8.1 and 3.8.2.

The changing history of the use, or non-use, of the disputed domain name revealed by the Wayback Machine extracts included in the Complaint suggest that there may have been changes to the registrant of the disputed domain name over time. That conclusion, however, is really a matter of speculation. There is not sufficient evidence before the Panel to conclude that the current registrant was not the original registrant or, if the Respondent was not the original registrant, when the Respondent became the registrant.

In these circumstances, the Panel is not prepared to find that the disputed domain name was registered in bad faith.

Accordingly, the Complainant has not established the third requirement under the Policy and the Complaint must fail.

C. Rights or Legitimate Interests

As the Complaint must fail, no good purpose would be served by addressing this requirement.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

The Complainant argued that the disputed domain name was registered and used in bad faith by reference to the well-known passive holding principle citing [WIPO Overview 3.0](#), section 3.3. The Complainant further cited 12 prior decisions under the Policy in support of that proposition including *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Despite this detailed familiarity with the Policy, the Complainant has not attempted to deal with the basic problem that the disputed domain name was first registered some three years before the Complainant was founded. Instead, the Complainant argued that the Respondent has no rights or legitimate interests in the disputed domain name:

“Since the creation of the disputed domain, and over the years, the Respondent should be considered as having no rights or legitimate interests in respect of the Domain Name that is the subject of the Complaint due to the following:

“(i) the Respondent has never been known and is not known under the wording “lifeware”;

“(ii) the Respondent has not been licensed or authorized by the Complainant to register the disputed domain name;

“(iii) the Respondent cannot assert that its use of the disputed domain name is in connection with a bona fide offering of goods or services or a noncommercial use; and

“(iv) the Respondent is not related in any way to the Complainant’s business.”

This is essentially an argument that the disputed domain name should be transferred to the Complainant because the Respondent is not using it. That alone is not sufficient to warrant an order of transfer under the Policy. At this stage in the life of the Policy, the Complainant should have known it needed to address the registration of the disputed domain name several years before the Complainant came into existence and could not simply rely on the apparent non-use of the disputed domain name.

In these circumstances, the Panel considers a finding of reverse domain name hijacking is appropriate.

6. Decision

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: April 7, 2024