

ADMINISTRATIVE PANEL DECISION

RB Global v. Eric Jacobs, Ritchie Bros. Auctioneers (Canada) Ltd.
Case No. D2024-0975

1. The Parties

Complainant is RB Global, United States of America (“United States”), represented by ZeroFox, United States.

Respondent is Eric Jacobs, Ritchie Bros. Auctioneers (Canada) Ltd., Nigeria.

2. The Domain Name and Registrar

The disputed domain name <rbauctioner.com> is registered with Squarespace Domains II LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 5, 2024. On March 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 7, 2024, 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 Complainant on March 7, 2024, 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 March 14, 2024.

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 March 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 8, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on April 15, 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

Complainant is a publicly traded Canadian company based in the United States that is active in the auction industry. Up until May 2023, Complainant was formally known as “Ritchie Bros. Auctioneers”, and still commonly operates under this trade name.

Complainant has brought forward – and the Panel has confirmed by means of an independent Internet search undertaken within its general power set forth by paragraph 10 of the Rules – that Complainant enjoys, as part of the larger RB group of companies, rights in numerous registered trademarks relating to its company name and brand “Ritchie Bros. Auctioneers”, inter alia, but not limited to, the following:

- word mark RITCHIE BROS. AUCTIONEERS, United States Patent and Trademark Office (“USPTO”), registration number: 2452408, registration date: May 22, 2001, status: active;
- device mark RB, USPTO, registration number: 2338492, registration date: April 4, 2000, status: active;
- word mark RB AUCTION, Chile Trademark Office (“INAPI”), registration number: 808767, registration date: February 15, 2008, status: active.

Moreover, Complainant operates a website at “www.rbglobal.com” (to which the domain names <rbglobal.com> as well as <ritchiebros.com> resolve), promoting, inter alia, Complainant’s business in the auction industry.

According to the disclosed Whois information for the disputed domain name, Respondent is located in Nigeria. The disputed domain name was registered on October 21, 2022, and does not resolve to any content on the Internet.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, Complainant contends to operate major auction venues worldwide, with roots going back to 1958 and over 7,700 employees.

Complainant submits that the disputed domain name is confusingly similar to Complainant’s trademarks, as it wholly incorporates, e.g., the RB AUCTION trademark, with the addition of the letters “er”. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) there is no relationship between Complainant and Respondent, and Respondent has not been authorized by Complainant to use any of its names, (2) the disputed domain name currently does not resolve to any content on the Internet and there is no evidence to suggest that there has ever been any content thereunder; and (3) mail exchange (MX) records have been activated under the disputed domain name indicating that Respondent has the intention of sending and receiving emails using the disputed domain name. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Respondent obviously is leveraging Complainant’s trademarks to either impersonate them or to use their reputation to mislead consumers, and (2) the active MX records give Respondent the ability to impersonate Complainant further and to cause damage to its reputation and its customers.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

First, 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 Complainant's trademarks and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant verifiably has rights in respect of, e.g., the RB and the RB AUCTION trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Moreover, the entirety of the textual components of the RB trademark and the RB AUCTION trademark is reproduced within the disputed domain name, added by the term "auctioner" or the term "er", respectively. Accordingly, the disputed domain name is confusingly similar to Complainant's RB and RB AUCTION trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.10.

Although the addition of other terms (here, the term "auctioner") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and Complainant's RB trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. The Panel also notes that the disputed domain name, at the same time, constitutes a typo-squatting of Complainant's RB AUCTION trademark. UDRP panels agree that domain names which consist, e.g., of an intentional misspelling of a trademark are considered to be confusingly similar under the UDRP (see [WIPO Overview 3.0](#), section 1.9).

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

B. Rights or Legitimate Interests

Second, 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.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In particular, Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its RB and/or RB AUCTION or any of its trademarks, either as a domain name or in any other way. Although Respondent's name somehow corresponds with the disputed domain name, Respondent does not appear to have any trademark rights associated with the term "rb" or "rb auction" on its own, nor is there any evidence that Respondent has been commonly known by the disputed domain name. In this context, the Panel has noted that Respondent's organization name "Ritchie Bros. Auctioneers (Canada) Ltd." is the same as Complainant's prior name. According to Complainant, it does not have any relationship with Respondent, therefore it is most likely that false Whois information have been filed here by Respondent. Finally, Respondent so far has neither used the disputed domain name for a bona fide offering of goods or services nor for a legitimate noncommercial or fair purpose, but rather passively held it, besides that MX records have been activated thereunder. Given that the disputed domain name constitutes a deliberate misspelling of Complainant's RB AUCTION trademark, and that Respondent has used Complainant's prior trade name as its organization name when registering the disputed domain name, and that MX records have been set up with the disputed domain name, this allows to conclude that Respondent likely has the intention to use the disputed domain name for phishing activities, malware or in some other illegal manner, which would not give rise to any rights or legitimate interests on the part of Respondent in the disputed domain name.

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

C. Registered and Used in Bad Faith

Finally, 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.

In the case at hand, the Panel notes that Respondent so far obviously has neither used the disputed domain name for a bona fide offering of goods or services nor for a legitimate noncommercial or fair purpose, but rather passively held it, except that MX records have been activated thereunder.

In this context, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put ([WIPO Overview 3.0](#), section 3.3). Having reviewed the record, the Panel notes (1) the undisputed reputation of Complainant's RB and RB AUCTION trademarks, (2) the composition of the disputed domain name which is a deliberate misspelling of Complainant's RB AUCTION trademark, as well as (3) the absence of any explanation as to why Respondent needed to register the disputed domain name that is confusingly similar to Complainant's trademarks, if not to somehow profit from the reputation connected thereto, and, thus, finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Finally, it carries weight in the eyes of the Panel that Respondent most likely provided false contact information in the Whois register for the disputed domain name since the Written Notice dated March 15, 2024 could not be delivered to Respondent. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

Having reviewed the record, the Panel, therefore, holds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel, therefore, finds that Complainant has established the third element of the Policy, too.

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 <rbauctioner.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: April 29, 2024