

ADMINISTRATIVE PANEL DECISION

Anywhere Real Estate Inc v. Carolina Rodrigues, Fundacion Comercio Electronico

Case No. D2024-1691

1. The Parties

The Complainant is Anywhere Real Estate Inc, United States of America (“United States” or “U.S.”), represented by ZeroFox, United States.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <coldwellbankremoves.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 April 22, 2024. On April 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 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 (Registration Private, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 24, 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 amendment to the Complaint on May 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 the Respondent of the Complaint, and the proceedings commenced on May 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 6, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on June 17, 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

It results from the Complainant's undisputed allegations that it is a publicly owned real estate services company based in the United States with almost 10,000 employees. It owns and franchises several real estate brands and brokerages, and offers consumer programs, lead generation, relocation, and title settlement services. According to the Complainant's undisputed allegations Coldwell Banker is a subsidiary brand wholly owned by the Complainant with registered trademarks for their name under the entity "Coldwell Banker Real Estate LLC".

The Complainant's affiliate company Coldwell Banker Real Estate LLC owns the U.S. trademark registration No. 6781337 COLDWELL BANKER registered on July 5, 2022 for services in class 35.

In addition, the Complainant uses the domain name <coldwellbanker.com> as its official domain name and also owns the domain name <coldwellbankermoves.com>.

The disputed domain name <coldwellbankremoves.com> has been registered on September 12, 2023. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a parking page displaying Pay-Per-Click ("PPC") links in the Complainant's area of activity.

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.

The Complainant contends that the disputed domain name is confusingly similar with the trademark COLDWELL BANKER in which the Complainant has rights, since the disputed domain name wholly incorporates the trademark with an intentional misspelling switching the last two letters, a common typosquat strategy. The changes made do not create a new or unique phrase that can be reasonably distinguished from the Complainant's registered trademark or trade name. The addition of "moves" at the end likely serves to increase confusion since the disputed domain name closely resembles the Complainant's registered domain name <coldwellbankermoves.com>.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the disputed domain name has not been used nor prepared for use for a bona fide offering of goods or services. The disputed domain name currently redirects to a parked page with PPC links and the disputed domain name at the top. The Complainant has not authorized, licensed or otherwise permitted the Respondent to use its trademark or to imply any connection between the two Parties.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, considering the strength and global reach of the Complainant, along with the closeness of the disputed domain name to its official website, the Respondent is likely aware of the Complainant's trademark and intends to disrupt their business by diverting traffic to their own site, selling the disputed domain name to the Complainant for a profit or leveraging the disputed domain name for impersonating emails.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

- (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.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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.

In accordance with section 1.4.1 of [WIPO Overview 3.0](#), as the Complainant is the parent company of Coldwell Banker Real Estate LLC that is the owner of the COLDWELL BANKER trademark registrations mentioned above in the Factual Background, the Panel considers that the Complainant has standing to bring this UDRP proceeding.

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

In addition, it is the view of this Panel that the switching of the last two letters of the term “banker” in the disputed domain name results to be a common, obvious, or intentional misspelling of the Complainant's trademark, and cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark since the disputed domain name contains sufficiently recognizable aspects of the relevant mark (see [WIPO Overview 3.0](#) at section 1.9).

Although the addition of other term, here “moves”, 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 the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

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 the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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.

Moreover, the Panel notes that the disputed domain name consists of a common, obvious, or intentional misspelling of the Complainant’s trademark, so that this Panel finds it most likely that employing a misspelling in this way signals an intention on the part of the Respondent to confuse users seeking or expecting the Complainant.

Furthermore, it results from the undisputed evidence before the Panel that the disputed domain name resolves to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant’s trademark or otherwise mislead Internet users (i.e., a parking page displaying PPC links in the Complainant’s area of activity). Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent bona fide offering of goods or services, where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users (see [WIPO Overview 3.0](#) at section 2.9, with further references). This Panel shares this view. Therefore, such use can neither be considered as bona fide offering of goods or services nor 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.

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.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant’s documented allegations that the disputed domain name resolves to resolved to a parking page displaying PPC links in the Complainant’s area of activity. For the Panel, it is therefore evident that the Respondent positively knew the Complainant’s mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant’s trademark when it registered the disputed domain name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

On this regard, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

(i) the nature of the disputed domain name (i.e., a typo of the Complainant's trademark plus a term and being confusingly similar to not only the Complainant's trademark but also its official domain names);

(ii) the content of the website to which the disputed domain name directs (i.e., a parking page displaying PPC links in the Complainant's area of activity);

(iii) a clear absence of rights or legitimate interests coupled with no response for the Respondent's choice of the disputed domain name;

(iv) the Respondent's use of a privacy service to conceal its identity.

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

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 <coldwellbankremoves.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: July 1, 2024