

ADMINISTRATIVE PANEL DECISION

Oswego Enterprises, LLC v. Debora Sanil, Garden
Case No. D2024-2406

1. The Parties

Complainant is Oswego Enterprises, LLC, United States of America (“United States”), represented by Holland & Knight, LLP, United States.

Respondent is Debora Sanil, Garden, United States.

2. The Domain Name and Registrar

The Disputed Domain Name <grampasweeder.shop> 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 June 12, 2024. On June 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 13, 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, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on June 17, 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 (adding the Registrar-provided registrant information to the Complaint) on the same date and an amended Complaint on June 21, 2024.

The Center verified that the Complaint together with the amendment to the Complaint and 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 Respondent of the Complaint, and the proceedings commenced on June 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 23, 2024.

The Center appointed Richard W. Page as the sole panelist in this matter on August 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

Since at least as early as 2001, Complainant has provided lawn and garden tools, namely, weed removers under the GRAMPA'S WEEDER Mark. The GRAMPA'S WEEDER Mark has become widely known in the lawn and garden industry and Complainant has invested substantial time, expense, and effort in the creation of goodwill surrounding the GRAMPA'S WEEDER Mark.

Complainant has obtained a United States trademark registration for GRAMPA'S WEEDER for "lawn and garden hand tools, namely weed removers" U.S. Registration No. 2,740,072 registered July 22, 2003, in International Class 8.

Complainant's primary website for its lawn and garden tools is located at "www.grampasweeder.com". Complainant has operated this website since at least December 21, 2001.

On or around May 8, 2024, more than twenty years after Complainant first used the GRAMPA'S WEEDER Mark on its website, Respondent, without Complainant's permission, registered the Disputed Domain Name.

The Disputed Domain Name was registered on May 8, 2024, and resolves to a website which uses the GRAMPA'S WEEDER Mark and asks visitors to "checkout" by giving their personal information.

5. Parties' Contentions

A. Complainant

Complainant contends that Respondent's actions are calculated to trade on Complainant's established trademark rights, reputation, and goodwill, resulting in the infringement of the GRAMPA'S WEEDER Mark. Because of Respondent's unauthorized use and registration to the Disputed Domain Name, which is confusingly similar to the GRAMPA'S WEEDER Mark, and because a "purchase" mechanism has been created in order to unfairly capitalize on Complainant's rights, Complainant is concerned these actions will confuse consumers and damage Complainant's brand.

Complainant further contends that Respondent registered the Disputed Domain Name in order to capitalize on Complainant's established goodwill and brand recognition, in an effort to lure website traffic and then entice such visitors to submit their person information under the mistaken belief that they were purchasing Complainant's well-known, branded products. In connection with this effort, Respondent used the GRAMPA'S WEEDER Mark, in its entirety, in both the Disputed Domain Name and on the website to which the Disputed Domain Name resolves, to deceive visitors into thinking it was Complainant's own website.

Complainant further contends that the slight difference between the Disputed Domain Name and the GRAMPA'S WEEDER Mark – the mere addition of the non-distinctive generic Top-Level Domain ("gTLD") ".shop" – does not alter the confusing similarity.

Complainant further contends that Respondent has gone so far as to reproduce, almost exactly, the home page, product images and listings, about page and contact information page - including Complainant's own phone number, with only a single altered digit – off Complainant's website.

Complainant further contends that Respondent has been phishing by luring Complainant's customers to Respondent's website and enticed visitors to provide information and purportedly make purchases, when there is no evidence that such purchases actually are – or in fact could be – fulfilled.

Complainant asserts that Respondent can have no rights or legitimate interest in the Disputed Domain Name because its use is an infringement of the GRAMPA'S WEEDER Mark under the Lanham Act.

Complainant further asserts that Respondent's use of the Disputed Domain Name is unauthorized. Respondent is not related to, affiliated with, endorsed by, or otherwise associated with Complainant. Respondent has not sought from Complainant, nor has Complainant grant to Respondent, authorization, permission, or license to use the GRAMPA'S WEEDER Mark.

Complainant further asserts that Respondent had both actual and constructive knowledge of the GRAMPA'S WEEDER Mark. Complainant further declares that a website engaging in phishing by luring unsuspecting Internet users to give up personal information can be neither bona fide nor confer legitimate rights on Respondent.

Complainant further asserts that there is no evidence in this file that Respondent is commonly known by the Disputed Domain Name.

Complainant declares that Respondent's action constitutes an intentional attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the GRAMPA'S WEEDER Mark in violation of paragraph 4(b)(iv) of the Policy, establishing bad faith.

Complainant concludes that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following three elements:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the GRAMPA'S WEEDER 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.

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 GRAMPA'S WEEDER Mark and the Disputed Domain Name. [WIPO Overview 3.0](#), section 1.7.

[WIPO Overview 3.0](#), section 1.2.1 states that registration of a trademark is prima facie evidence of Complainant having enforceable rights in the GRAMPA'S WEEDER Mark.

Complainant has shown rights in respect of the GRAMPA'S WEEDER Mark for the purposes of the Policy by demonstrating registration of the GRAMPA'S WEEDER Mark. [WIPO Overview 3.0](#), section 1.2.1.

[WIPO Overview 3.0](#), section 1.7 says that inclusion of the entire trademark in a domain name will be considered confusingly similar. [WIPO Overview 3.0](#), section 1.11.1 instructs that gTLDs, such as ".shop," may be disregarded for purposes of assessing confusing similarity.

The entirety of the GRAMPA'S WEEDER Mark (minus the apostrophe) is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the GRAMPA'S WEEDER 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

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a Disputed Domain Name.

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving Respondent lacks rights or legitimate interests in the Disputed Domain Name may result in the difficult task of "proving a negative," requiring information that is often primarily within the knowledge or control of Respondent. As such, where Complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or a legitimate interest in the Disputed Domain Name:

(i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed 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 Disputed 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 Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the GRAMPA'S WEEDER Mark.

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.

Panels have held that the use of the Disputed Domain Name for illegal activity, here claimed phishing for Internet users personal information, can never confer rights or legitimate interests on Respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 the Disputed Domain Name in bad faith.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

(i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of GRAMPA'S WEEDER Mark or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or

(ii) you [Respondent] have registered the Disputed Domain Name in order to prevent the owner of the GRAMPA'S WEEDER Mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Disputed Domain Name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the GRAMPA'S WEEDER Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on your website or location.

In the present case, the Panel notes that Respondent has engaged in activity meeting the requirements of paragraph 4(b)(iv) of the Policy.

Panels have held that the use of the Disputed Domain Name for illegal activity, here phishing for personal information, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

The Panel finds that 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 <grampasweeder.shop> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: August 19, 2024