

ADMINISTRATIVE PANEL DECISION

Jonathan Dansey v. Svetlin Yordanov, Svetmar Interiors Ltd
Case No. D2022-1157

1. The Parties

The Complainant is Jonathan Dansey, United Kingdom (“UK”), represented by Inbrandgible Limited, United Kingdom.

The Respondent is Svetlin Yordanov, Svetmar Interiors Ltd, United Kingdom represented by Marco Mauer, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <boilermedics.com> (the “Disputed Domain Name”) 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 1, 2022. On April 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 5, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 6, 2022. The Response was filed with the Center on May 6, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on May 20, 2022. 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 an individual who runs a business providing boiler servicing and plumbing and electrical services. He has done so since about 2009. His business is based in Essex (in the UK) but also carries out work in London and elsewhere. He registered the domain names <boilermedic.com> and <boilermedic.co.uk> on April 7, 2009 and September 5, 2010 respectively. They have since about those dates been linked to a website which promotes his business. The Complainant owns UK registered trademark no UK00003495987 for the terms “boiler medic” and “BOILERMEDIC”. It was applied for on June 2, 2020 and registered on September 9, 2020. It is referred to as the “BOILERMEDIC trademark” in this decision. No evidence has been provided as to the size of the Complainant’s business but it would appear that he operates as a self-employed tradesman.

The Respondent operates a broadly similar business also offering services in London and Essex. He registered the Disputed Domain Name on October 16, 2015. At about the same time he also registered <boilermedics.co.uk>. These domain names have been linked to a website promoting the Respondent’s business since at least 2018.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions can be summarized as follows.

The Disputed Domain Name is confusingly similar to his BOILERMEDIC Trademark.

The Respondent has no rights or legitimate interests in the term “boilermedic” or “boilermedics”.

In consequence, the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. The Complainant says the Respondent deliberately adopted a name very similar to the Complainant’s trademark to cause confusion and to attract customers away from the Complainant.

The Complainant also draws attention to the fact that a complaint he lodged with Nominet in relation to the domain name <boilermedics.co.uk> resulted in a decision in his favour.

B. Respondent

The Respondent says the term “boilermedics” is generic. His evidence in this regard is discussed below. He says he adopted the name boilermedics because of its supposed generic meaning and without knowledge of the Complainant or his business. He says the Nominet decision was a summary decision as he did not file a response because he did not receive notice of the proceedings.

The Respondent also goes into considerable detail about whether his website is more popular than that of the Complainant. The Panel does not think this analysis is of any relevance and does not consider it further.

6. Discussion and Findings

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

(i) the Disputed Domain Name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;

(iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the BOILERMEDIC trademark. The Disputed Domain Name is clearly confusingly similar to this trademark as it is simply the plural version of the same term.

It is well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the BOILERMEDIC trademark. The Complainant has prior rights in the BOILERMEDIC trademark which precede the Respondent's acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Respondent says that (i) above applies. He has been operating his business since at least 2018. Clearly in these circumstances paragraph 4(c)(i) is *potentially* applicable. The only issue then is as to the meaning of *bona fide*. It seems to the Panel that paragraph 4(c)(i) cannot simply apply if a business exists which has deliberately adopted another person's trademark as its name, otherwise the Policy would be inapplicable to all cases in which a respondent was operating a business, which is clearly not its intention. The words *bona fide* must encompass the Respondent's knowledge and motives in choosing the name in question – if done deliberately to trade off, or take advantage of the Complainant's name or reputation, then the *bona fide* requirement is not met.

Is this such a case? The Panel has found resolving this issue to be not straightforward given the facts of this case. The term “Boiler Medics” does not seem to the Panel to be so unusual as a name for a business directed to repairing and servicing boilers as to rule out the possibility of independent derivation. However, the Panel does not agree that the term is generic. Clearly the word “boiler” is entirely descriptive but the term “medic” as an abbreviation of “medical” or “medicine” would normally be directed at human health related usages. Its use in relation to boilers amounts to a play on words which seems to the Panel likely to be relatively unusual. The Respondent's evidence would seem to confirm this – whilst he says the term is generic the only evidence he produces in support is some search results from the UK Gas Safe register

(which all UK gas engineers must be registered with) and which show only two other businesses using the term – each in conjunction with other words. These are a company called Colson and Loaring Boiler Medic Ltd with an address in Northamptonshire, and a business called Boiler Medics (West Midlands) with an address in Staffordshire. The Panel does not think this is enough to show the term is generic. The Panel does not agree with the Respondent when he says this evidence “shows many Gas Safe registered engineers using Boiler Medic in their trading names”. It shows that two do (apart from the Complainant and the Respondent).

The question that then arises is what was in the Respondent’s mind when he registered the Disputed Domain Name. The Response says “In October 2015 there was no registered trademark over the name boiler medic which was considered to be generic by [the Respondent]” and “The Respondent was not aware of boilermedic.com in 2015 and had no intention of disturbing the Claimant’s business”. If the latter statement is accepted as true then it seems to the Panel that the Respondent would be acting *bona fide* and would establish a legitimate interest. The Panel has however concluded that on the balance of probabilities it is more likely than not that the Respondent would have been aware of the Complainant’s use of the term BOLERMEDIC at the time he registered the Disputed Domain Name. The Panel recognises that this finding necessarily involves disbelieving the Respondent when he states he had no knowledge of the Complainant’s use of <boilermedic.com> when he registered the Disputed Domain Name. The Panel is conscious that proceedings under the UDRP are of a limited and restricted nature, do not involve oral hearings, discovery or cross examination, and hence are not readily suited to deciding disputed questions of fact or matters of truth or falsehood. That does not however mean a panel has to accept without scrutiny a claim by a respondent to lack knowledge of a complainant or its trademark. Were that the case any UDRP complaint could be defeated by an untruthful respondent. The Panel considers it is a question of evaluating all the available evidence and circumstances, including where appropriate forming reasonable inferences based on the available material, and reaching a conclusion as to whether or not, on the balance of probabilities, the Respondent is to be believed. The Panel consider there are a number of factors which, taken cumulatively, mean it is more likely than not to mean the Respondent’s claim to have been unaware of the Complainant’s use of <boilrmedic.com> cannot be accepted. Those factors are as follows:

1. In the opinion of the Panel the term BOLER MEDIC is not descriptive and relatively unusual (see discussion above). It is not however so unusual as to rule out completely the possibility of independent derivation.
2. The Respondent and the Complainant are in the same line of business.
3. They operate in substantially the same geographic area.
4. By the time the Respondent registered the Disputed Domain Name the Complainant had been in business for around five years using the term “BOILERMEDIC”.
5. The Panel would have thought it likely the Respondent would have conducted some Internet searching to verify the suitability of his proposed choice of name. Had he done so it seems more likely than not that the Complainant’s usage of a near identical term would have been revealed. The Respondent provides no information at all about what searching he did or with what results.
6. Notably the Respondent has simply made a bare assertion of his lack of knowledge. No statement from the Respondent explaining exactly what he did and what his knowledge was has been provided and no corroborating evidence of any kind has been provided supporting his claim to have independently derived a name substantially the same as the Complainant’s.

Taking all of this together the Panel concludes it is more likely than not that when the Respondent registered the Disputed Domain Name he was aware of the Complainant’s use of the term BOILERMEDIC. That being so the Panel does not think the Respondent’s usage was *bona fide*. In reaching this conclusion the Panel attaches no significance to the Nominet decision the Complainant relies upon. That was a summary decision given in the absence of a response and is not in the Panel’s opinion of relevance to the present

issues.

Accordingly the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

In the present circumstances the Panel concludes that it is more likely than not that the Respondent was aware of the Complainant and his business, and the Panel infers he selected the Disputed Domain Name because of its similarity to the Complainant's "BOILER MEDIC" name and used it to attract customers to a competing business by creating a likelihood of confusion. In the circumstances the Panel concludes that paragraph 4(b)(iv) applies. For reasons discussed above in relation to legitimate interest the Panel declines to accept the Respondent's case that he was unaware of the Complainant's usage of <boilermedic.com> when he registered the Disputed Domain Name.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <boilermedics.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: June 3, 2022