

ADMINISTRATIVE PANEL DECISION

Bunzl Public Limited Company v. Anto Duffy, Anto duffy
Case No. D2023-0264

1. The Parties

The Complainant is Bunzl Public Limited Company, United Kingdom, represented by Stevens & Brand, LLP, United Kingdom.

The Respondent is Anto Duffy, Anto duffy, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <abcokovexpackaging.com> is registered with Paragon Internet Group Ltd t/a Paragon Names (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 20, 2023. On January 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 2023, 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 (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 26, 2023, 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 January 27, 2023.

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 January 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2023. Save for an email to the Center dated February 16, 2023, discussed below, the Respondent did not submit any response.

The Center appointed Antony Gold as the sole panelist in this matter on March 13, 2023. 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 member of the Bunzl group of companies, which is engaged in the distribution and outsourcing of non-food consumables for the food service, grocery, healthcare, and other sectors. Abco Kovex (UK) Limited is a subsidiary of the Complainant and specializes in the importation, manufacturing and distribution of packaging materials and machinery. It trades under the name ABCO KOVEX and it owns many trade marks to protect this trading style including, by way, of example, European Union Trade Mark, registration number 015619877, registered on October 25, 2016 in classes 7, 16, 37 and 39. It also owns and operates the domain name <abcokovex.com>, which resolves to a website providing information about its products and services.

On February 16, 2023, the Respondent sent an email to the Center stating that “this company” is no longer in use, and that this company is in waiting to be struck off from companies house so the domain name is no longer in use from January 2023. It is not clear to which “company” the Respondent is referring to.

On June 22, 2022, a Northern Irish company, Abco Kovex Packaging Limited, was incorporated by an unrelated third party. This company is not part of the Bunzl group of companies and neither the Bunzl Group, nor any company within it, consented to its use of the term “Abco Kovex” as part of its company name. The Registrar of Companies in Northern Ireland has given notice that Abco Kovex Packaging Limited will be struck off the Register of Companies and dissolved.

The disputed domain name was registered on July 7, 2022. It does not resolve to an active website.

5. Parties’ Contentions

A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. The disputed domain name contains the Complainant’s mark in full and simply adds the descriptive word “packaging”. The relevant part of the disputed domain name is therefore identical to the Complainant’s ABCO KOVEX mark.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not made any *bona fide* or legitimate commercial use of the disputed domain name. Nor is there any evidence of the Respondent’s use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods and services, nor has the Respondent been commonly known by the disputed domain name.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. The Complainant believes that the Respondent intends to use the disputed domain name in order to send false or fraudulent emails purporting to be from individuals within the Bunzl Group with the intention of damaging its business and/or deriving a fraudulent financial benefit and/or forcing the Complainant to buy the disputed domain name from the Respondent.

B. Respondent

The Respondent did not provide a formal response to the Complainant’s contentions but, on February 16, 2023, it sent an email to the Center stating; “This company is no longer in use, the company is in waiting to be struck off from companies house so the domain name is no longer in use from 1/01/2023.” The

Respondent did not, however, respond to the Complainant's attempt to procure a transfer to it of the disputed domain name outside of the formal settlement process.

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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

The Complainant has provided details of its trade mark registrations for ABCO KOVEX, including the mark in respect of which details are set out above, which thereby establish its rights in this mark.

As a technical requirement of registration, the Top-Level Domain ("gTLD"), that is ".com" in the case of the disputed domain name, is typically disregarded when assessing confusing similarity. The disputed domain name comprises the Complainant's ABCO KOVEX trade mark in its entirety, followed by the word "packaging". This additional term does not prevent the disputed domain name from being found confusingly similar to the Complainant's mark. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

The Complainant's ABCO KOVEX mark is recognizable within the disputed domain name and the Panel accordingly finds that it is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, without limitation, examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used, or made demonstrable preparations to use, the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name or a name corresponding to the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

Non-use of the disputed domain name does not comprise use in connection with a *bona fide* offering of services. There is no evidence to indicate that the Respondent has been commonly known by the disputed domain name and the second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. Nor is the Respondent making a legitimate noncommercial use of the disputed domain name and its characteristics are strongly suggestive of an affiliation or connection with the Complainant (which does not

exist), which prevents its use from being considered fair; see, for example, *ISAE SUPAERO Institut Supérieur de l'Aéronautique et de l'Espace v. jia jie li*, WIPO Case No. [D2022-1639](#).

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it does have such rights or legitimate interests. In the absence of any substantive response from the Respondent to the Complaint, it has failed to satisfy that burden. The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant has not submitted any evidence which directly links the Respondent with the person or entity who registered the Abco Kovex Packaging Limited entity in Northern Ireland. However, having regard to the fact that little more than two weeks elapsed between the incorporation of Abco Kovex Packaging Limited and the registration of the disputed domain name, coupled with the Respondent's email to the Centre explaining that; "This company is no longer in use, the company is in waiting to be struck off from companies house", there is plainly a close connection between them. Having regard, additionally, to the fact that the disputed domain name combines the Complainant's distinctive ABCO KOVEX mark with the word "packaging", which is broadly descriptive of the products supplied by the Complainant, it is clear that the Respondent was aware of the Complainant and its ABCO KOVEX mark as at the date of registration of the disputed domain name. Although there is no direct evidence that the Respondent intended to use the disputed domain name for dishonest purposes, the circumstances of its registration are such that it is not possible to conceive of any good faith intent on the part of the Respondent, nor has any such motive been suggested by the Respondent. The Panel therefore finds the registration of the disputed domain name to have been in bad faith.

The inactive status of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. In this respect, see section 3.3 of the [WIPO Overview 3.0](#), which explains that; "[f]rom the inception of the UDRP, panelists 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". The factors that are typically considered when 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 concealment of its identity or its use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put. See also *VOLKSWAGEN AG v. Danny de graaf*, WIPO Case No. [D2020-1940](#).

These factors are fulfilled in the current circumstances in that: (i) the Complainant's mark is distinctive in the context of the Policy; (ii) the Respondent has not served a substantive response to the Complaint, nor is there any evidence of actual or contemplated good-faith use of the disputed domain name; (iii) the Respondent has sought to conceal its identity by its use of a privacy service; (iv) there is no plausible good faith use to which the disputed domain name is likely to be put by the Respondent as, due to its composition, it is inevitable that it will be associated by Internet users with the Complainant. Accordingly, the circumstances of the Respondent's holding of the disputed domain name support a finding of bad faith under the doctrine of passive holding.

The Panel therefore finds that the Respondent has registered and is using the disputed domain name in bad faith.

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 <abcokovexpackaging.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: March 30, 2023