

ADMINISTRATIVE PANEL DECISION

Corning Incorporated v. Domain Administrator, Fundacion Privacy Services Ltd.

Case No. D2023-0458

1. The Parties

The Complainant is Corning Incorporated, United States of America (“United States”), represented by Gowling WLG (Canada) LLP, Canada.

The Respondent is Domain Administrator, Fundacion Privacy Services Ltd., Panama.

2. The Domain Name and Registrar

The disputed domain name <comingcareers.com> is registered with Media Elite Holdings Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2023. On February 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 3, 2023, 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 for the disputed domain name.

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 February 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 6, 2023.

The Center appointed Alfred Meijboom as the sole panelist in this matter on March 15, 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 publicly traded company and one of the world's leading innovators in glass science, ceramic science, and optical physics. In 2018 alone, the Complainant generated USD 11.29 billion in revenue. The Complainant is the owner of over 325 trademark registrations worldwide for trademarks comprised of, or containing, CORNING, including;

- Australian trademark CORNING with registration number 130807 registered on January 29, 1957;
- Canadian trademark CORNING with registration number TMA240498 registered on March 7, 1980;
- Chinese trademark CORNING with registration number 576489 registered on December 20, 1991;
- European Union trademark CORNING with registration number 16966822 registered on November 6, 2017;
- United States trademark CORNING with registration number 618649 registered on January 3, 1956; and
- United States trademark CORNING with registration number 918421 registered on August 17, 1971.

The Complainant's trademarks will be hereinafter referred to as the "CORNING trademark".

The Respondent registered the disputed domain name <corningcareers.com> on June 6, 2022. The disputed domain name resolves to a pay-per-click website featuring sponsored links. The disputed domain name is also listed for sale for USD 899.

5. Parties' Contentions

A. Complainant

The Complainant alleged that the disputed domain name is confusingly similar to the CORNING trademark because the entire CORNING trademark is included in the disputed domain name and the addition of the term "careers" is descriptive or non-distinctive and does not take away from the likelihood of confusion. The Complainant alleged that, on the contrary, the likelihood of confusion between the disputed domain name and the CORNING trademark is rather enhanced by the addition of "careers" to the trademark, because Internet users are likely to be misled into believing that the disputed domain name resolves to a website that features the Complainant's job postings so that consumers are likely to be misled into believing that the disputed domain name is affiliated with, or otherwise connected to, the Complainant.

According to the Complainant, the Respondent is an unauthorized party who cannot claim a legitimate interest in a disputed domain name as its activities cannot be said to constitute a *bona fide* offering of goods or services. Further, the disputed domain name intentionally trades on the notoriety of the CORNING trademark which also cannot constitute a *bona fide* offering of goods or services. In addition, the Complainant alleged that it is also a well-established principle that directing a domain name that is confusing with a third party trademark to a pay-per-click site does not constitute *bona fide* use of the domain name by a respondent. The Complainant alleged furthermore that promoting the sale of the disputed domain name in these circumstances undermines a claim of legitimate interest.

The Complainant alleged that, given the nature of the disputed domain name, there can be no doubt that the Respondent had actual knowledge of the CORNING trademark at the time of registration, thereby supporting a finding of registration in bad faith. Also, the Complainant submits that the Respondent acquired the disputed domain name for the purpose of selling, renting, licensing or otherwise transferring it to the Complainant for valuable consideration in excess of his actual costs in registering the disputed domain name. According to the Complainant, the disputed domain name is confusingly similar with the CORNING trademark and has been made to resolve to a pay-per-click website, which use of the disputed domain name is likely to confuse potential consumers into believing that the Respondent is somehow affiliated with, or endorsed by, the Complainant, and the website puts the Respondent in a position to reap a financial benefit. Accordingly, the Complainant asserted that the disputed domain name is being used in an attempt to

intentionally attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the CORNING trademark as to source, sponsorship, affiliation, or endorsement.

B. Respondent

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

6. Discussion and Findings

The Respondent did not file a Response. However, as set out in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the consensus view of UDRP panels is that the respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in this proceeding. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical 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; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well established that the generic Top-Level Domain ("gTLD") ".com" should typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy.

The Panel finds that the disputed domain name is confusingly similar to the CORNING trademark. The disputed domain name incorporates the CORNING trademark in its entirety, and merely adds the word "careers", which does not prevent a finding of confusing similarity between the disputed domain name and the CORNING trademark under the Policy (see *e.g.*, *Bayer AG v. Melissa Solis, Bayer / Melissa Solis, Bayer Careers / Melissa Solis, bayer careers / Melissa Solis, Bayer*, WIPO Case No. [D2022-4127](#)).

Consequently, the first element of paragraph 4(a) of the Policy is met.

B. Rights or Legitimate Interests

The Complainant must show a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent may rebut (*e.g.*, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Complainant has sufficiently demonstrated that Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has submitted evidence showing that the website to which the disputed domain name is linked displays pay-per-click links that undisputedly redirect Internet users to websites of the Complainant's competitors. Although a website containing pay-per-click links does not per se constitute any illegitimate or illegal activity (*Lardi Ltd v. Belize Domain WHOIS Service Lt*, WIPO Case No. [D2010-1437](#)), the Panel finds that there is no *bona fide* use of the disputed

domain name by the Respondent because the disputed domain name suggests that the website linked to the disputed domain name lists job openings of the Complainant, which misleadingly diverts Internet users to the website in order to direct them towards using the pay-per-click links. Such use cannot be considered a *bona fide* use, nor a fair or noncommercial use.

The Panel is therefore satisfied that the Complainant has made a *prima facie* case, which the Respondent has not rebutted. As a result, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and the second element of paragraph 4(a) of the Policy is also met.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(b)(iv) of the Policy, there is evidence of registration and use of the disputed domain name in bad faith where the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service offered on the Respondent's website or location.

The Complainant has asserted that the CORNING trademarks "enjoy widespread recognition, have generated significant goodwill and have become famous", which has not been disputed by the Respondent. Other UDRP panels have acknowledged that the CORNING trademark is likely famous (e.g., *Corning Incorporated v. kai zheng, zheng kai*, WIPO Case No. [D2021-0802](#); *Corning Incorporated v. Human Resources*, WIPO Case No. [D2022-3057](#); and *Corning Incorporated v. Gabriel Joseph, Clearer Technology*, WIPO Case No. [D2022-3136](#)). UDRP panels have also consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a well-known mark by an unaffiliated entity can by itself create a presumption of bad faith (See section 3.1.4 of the [WIPO Overview 3.0](#)). The Panel is therefore satisfied that the Respondent must have had the CORNING trademark in mind when it registered the disputed domain name, and accordingly registered the disputed domain name in bad faith.

The Complainant must also prove that the Respondent uses the disputed domain name in bad faith. In accordance with paragraph 4(b)(i) of the Policy, an indication of use in bad faith is if circumstances indicate that the Respondent has registered or has 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 to a competitor of that complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name. The evidence shows that the Respondent is offering the disputed domain name for sale for USD 899, which sum is likely to exceed the Respondent's out-of-pocket costs related to the disputed domain name, so that the use of the disputed domain is in bad faith.

The Panel further observes that the Respondent concealed its identity in the registration of the disputed domain name through Fundacion Privacy Services LTD, a company which is frequently named as the respondent in UDRP cases. In this context the Panel refers to the panel in *Discover Financial Services v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1514](#), who has investigated the business method of Fundacion Privacy Services LTD and the Registrar, also in the matter at hand:

"Fundacion Privacy Services LTD and the Registrar are both based in Panama and so far as the Panel can tell in every one of the over 170 UDRP cases to date in which Fundacion Privacy Services LTD has been named, the Registrar has been the registrar in respect of the relevant domain names. From this the Panel drew the provisional inference that Fundacion Privacy Services LTD is the privacy service of the Registrar. [...] The common practice of reputable registrars that operate a privacy service (whether through a legally distinct entity or otherwise), when receiving a registrar verification request in the course of UDRP proceedings from a UDRP provider, is to reveal the details of the underlying registrant of the domain names in issue and that registrant's contact details. [...] It is [...] a matter of disappointment and concern that the Registrar refused to disclose the underlying registrant details in this case, either in response to the Center's verification request or in response to the Panel's express request that it do so."

[...]“[T]he Respondent has chosen to use a particular register and a particular privacy service that now has an extensive history of refusing to disclose the details of the underlying registrant and where in nearly all such cases the complainant succeeded. As the Panel has already recorded in the context of the Registrar’s conduct, that history strongly suggests that the Registrar together with Fundacion Privacy Services LTD, has adopted a business model of providing registrar and privacy services either to a single or multiple cybersquatters. If that is so, the use of this particular service arguably now carries with it a presumption of bad faith registration and use.”

The Panel in the matter at hand also infers from the fact that the Respondent used the services of Fundacion Privacy Services LTD and the Registrar to conceal its true identity also in these administrative proceedings as a presumption of use of the disputed domain name bad faith.

Consequently, for the reasons as explained above the third and last element of paragraph 4(a) of the Policy is also met.

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 <comingcareers.com> be transferred to the Complainant.

/Alfred Meijboom/

Alfred Meijboom

Sole Panelist

Date: March 23, 2023