

## **ADMINISTRATIVE PANEL DECISION**

Consumer Reports, Inc. v. Thomas Munroe  
Case No. D2023-0569

### **1. The Parties**

The Complainant is Consumer Reports, Inc., United States of America (“United States”), represented by Cozen O’Connor, United States.

The Respondent is Thomas Munroe, United States, represented by Pierce McCoy, PLLC, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <consumermattressreport.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 7, 2023. On February 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same day, 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 (redacted for privacy) and contact information in the Complaint.

The Center sent an email communication to the Complainant on February 10, 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 February 14, 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 February 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2023. On March 2, 2023, the Respondent requested an extension of the Response due date. An automatic four-day extension of the Response due date was granted until March 12, 2023. The Response was filed with the Center on March 12, 2023.

The Center appointed Lynda M. Braun, Clark W. Lackert, and Richard G. Lyon as panelists in this matter on April 21, 2023. The Panel finds that it was properly constituted. Each member of 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 non-profit consumer product testing and advocacy organization based in the United States. The Complainant was founded in 1936 and has operated under the CONSUMER REPORTS trademark since at least 1942. As an independent non-profit organization, the Complainant serves the public through unbiased product testing and ratings, research, journalism, public education, and advocacy.

The Complainant owns numerous registrations for its CONSUMER REPORTS trademark, registered with the United States Patent and Trademark Office (“USPTO”), including, but not limited to: CONSUMER REPORTS, United States Trademark Registration No. 672,849, registered on January 20, 1959, in International Class 16; CONSUMER REPORTS, United States Trademark Registration No. 5,064,394, registered on October 18, 2016, in International Classes 9, 35, and 41; CONSUMER REPORTS TV NEWS, United States Trademark Registration No. 1,880,957, registered on February 28, 1995, in International Class 41; CONSUMER REPORTS ON HEALTH, United States Trademark Registration No. 2,017,687, registered on November 19, 1996, in International Class 16; and CR CONSUMER REPORTS, United States Trademark Registration No. 5,745,914, registered on May 7, 2019, in International Classes 9 and 35.

The foregoing trademark registrations will hereinafter collectively be referred to as the “CONSUMER REPORTS Mark”.

The Complainant is also the owner of the domain name <consumerreports.org>, registered on June 20, 1997, which directs to its official website at “www.consumerreports.org”. The Complainant’s website is a review and testing site for a vast array of products, including mattresses, among many others. There is a search bar for all the different products, which when searched, takes the user to a subcategory page for that particular product. The subcategory page for mattresses includes reviews and test results, user reviews, a buying guide, a mattress selector, ratings, articles and videos, and some editor reviews.

The Respondent registered the Disputed Domain Name on November 3, 2018. The Disputed Domain Name directs to the Respondent’s website at “www.consumerreport.com”. The Respondent’s website consists exclusively of reviews of and information about mattresses, including reviews of the best mattresses of 2023, a comparison of various brands of mattresses, a blog with advice regarding good sleeping habits, Google shopping and BBB ratings, and the ability for customers to purchase a mattress on the site through links to manufacturers’ sites. The Respondent earns a commission from various companies featured on the website through affiliate links when a shopper purchases a mattress, an arrangement noted on the first page of the site.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The following are the Complainant’s contentions:

- the Disputed Domain Name is virtually identical to the Complainant’s CONSUMER REPORTS family of registered trademarks in sight, sound, appearance, and commercial impression since the only difference between the CONSUMER REPORTS Mark and the Disputed Domain Name is that the Disputed Domain Name includes the term “mattress” between the words “consumer” and “report” and removes the letter “s” in “report”;

- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Respondent is using the Disputed Domain Name to intentionally pass itself off as the Complainant for commercial gain by earning revenue from mattress sales;
- the Respondent is not commonly known by the Disputed Domain Name and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the Disputed Domain Name;
- the Respondent's use of the Disputed Domain Name is improper as "intentionally infringing";
- the Disputed Domain Name was registered and is being used in bad faith as the Respondent selected the Disputed Domain Name to attract Internet users to its website by creating a likelihood of confusion with the CONSUMER REPORTS Mark; and
- the Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

## **B. Respondent**

The following are the Respondent's contentions:

- the Disputed Domain Name is not identical or confusingly similar to the CONSUMER REPORTS Mark as the Disputed Domain Name's resolving website focuses solely on reviews and ratings of mattresses as compared with the CONSUMER REPORTS Mark's resolving website, which provides reviews on a broad array of products;
- the CONSUMER REPORTS Mark is descriptive since the Complainant relied on section 2(f) during the prosecution of its marks—and such use of section 2(f) assumes that the mark is descriptive;
- the Respondent has rights or legitimate interests in respect of the Disputed Domain Name since the Disputed Domain Name consists of descriptive, dictionary terms that are used in a manner genuinely related to the dictionary meaning. This use is permissible although the Complainant has prior trademark registrations;
- the Respondent is not using the Disputed Domain Name to trade off the goodwill or target the Complainant or its CONSUMER REPORTS Mark;
- the Respondent is making a *bona fide* offering of goods or services by providing a website consisting of mattress reviews, comparisons and ratings for consumers;
- the Complainant did not meet its burden of proving that the Disputed Domain Name was registered or used in bad faith since the Complainant provides no evidence of bad faith aside from conclusory assertions.

## **6. Discussion and Findings**

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (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

(ii) the Disputed Domain Name was registered and is being used in bad faith.

The Complainant bears the burden of proof on each element.

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry, a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark.

The Complainant has established rights in the CONSUMER REPORTS Mark based on its 80 years of use as well as its numerous registered trademarks for the CONSUMER REPORTS Mark in the United States. The registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. As stated in section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[w]here the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case". Thus, the Panel finds that the Complainant satisfied the threshold requirement of having rights in the CONSUMER REPORTS Mark. It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a relatively straightforward comparison between a complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

In a side-by-side comparison, the Panel finds that the Disputed Domain Name is confusingly similar to the CONSUMER REPORTS Mark insofar as the Disputed Domain Name contains the same words that make up the CONSUMER REPORTS Mark, "consumer" and "reports", except that the Respondent included the additional term "mattress" in between "consumer" and "report" and removed the "s" in "report.", followed by the generic Top-Level Domain ("gTLD") ".com". As stated in section 1.8 of [WIPO Overview 3.0](#), "where the relevant trademark 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". Thus, the addition of the term "mattress" to create the Disputed Domain Name does not prevent confusing similarity. See *e.g.*, *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and *Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. [D2008-0923](#). The nature of such an additional term may, however, bear on the assessment of the second and third elements, as it does here, see sections 6.B and 6.C, *infra*.

Finally, the gTLD in the Disputed Domain Name is a technical requirement and thus, it is well established that such element may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. In sum, the Panel finds that the Disputed Domain Name is confusingly similar to the CONSUMER REPORTS Mark.

Accordingly, the Panel finds that the Complainant established the first element of paragraph 4(a) of the Policy.

### **B. Rights or Legitimate Interests**

Under the Policy, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name, with the ultimate burden of proof remaining with the complainant.

The Panel finds that the evidence is sparse. The Complainant presents speculative allegations throughout the Complaint without providing specific evidence or proof for those allegations. Three of these allegations are crucial to the Complainant's case:

One, a predicate to the others, proceeds on an inaccurate factual premise. The Complainant alleges that “Respondent purports to offer reviews of mattress products which is virtually identical to Complainant’s legitimate business of offering reviews of various consumer products”; that “a comparison of the respective websites reveals that Respondent’s website is similar in form and substance to Complainant’s website”; and that “[i]t appears that Respondent uses the Infringing Domain as a means of attracting users to its copycat website where it offers mattress reviews”. However, the Panel finds that the sites’ appearances are markedly different. The subject matter is the same -- both sites have mattress reviews -- but the color, methodology, search functionality, depth of analysis, categories, number of products, and available hyperlinks vary considerably. The Respondent’s website is not a “copycat” of the Complainant’s.

The other two problematic allegations are related:

- (i) Without any supporting evidence other than the Respondent’s use of the words “consumer” and “report” in the Disputed Domain Name, the Complainant alleges, “Complainant recognizes that the Policy requires a finding that the Respondent intended to trade on the Complainant’s mark. Here, there can be no question that Respondent has done so and continues to do so”.
- (ii) Similarly, with the same scant proof, “Respondent deliberately selected Complainant’s mark as a salient part of its domain name knowing it was a reference to Complainant, rather than a non-infringing alternative”. Throughout the Complaint, the Complainant refers to the Disputed Domain Name as “infringing”.

These allegations simply recite the legal conclusions that the Complainant desires. The Policy requires proof, not mere conclusory allegations. Even assuming, as the Panel does, that the Complainant’s Mark is well known, that fact alone does not establish all three elements of paragraph 4(a) of the Policy, as the Complainant appears to contend.

In the Panel’s view, once the burden of production shifted from the Complainant, the Respondent was able to demonstrate that for several years prior to commencement of this proceeding it made a *bona fide* offering of reviews and rating information of mattresses – clearly a legitimate business -- through the Disputed Domain Name’s resolving website. Absent proven intent at the date of registration in 2018 to take advantage of the Complainant and the Complainant’s Mark, this provides a defense under paragraph 4(c)(i) of the Policy. The Panel cannot infer such intent from the proof provided in the Complaint.

The Panel stresses here that it is the burden of the Complainant to prove the three elements in a UDRP proceeding and concludes that the Complainant has not met its burden in the second element with tangible evidence.

The Panel finds that the Respondent just as likely acquired the Disputed Domain Name because of its value as a descriptive phrase consistent with its dictionary meaning as to exploit the goodwill attached to the Complainant’s Mark. The Complainant falls short of presenting any persuasive evidence that the Respondent targeted or infringed the Complainant’s CONSUMER REPORTS Mark by using the descriptive terms in the Disputed Domain Name. See *Montane Ltd. v. Orion Global Assets*, WIPO Case No. [D2017-0309](#). Rather, the Complainant’s arguments are conclusory and speculative and offer no concrete evidence for its assertions.

The Panel further concludes that the Complainant’s Mark does not by itself confer the right to monopolize every domain name containing “consumer”, “reports” or “report” that resolves to a product review site. UDRP panels have found that in proper circumstances “[i]t is well settled that a respondent may have a right to register and use a domain name to attract Internet traffic based on the appeal of a commonly used descriptive phrase, even where the domain name is identical or confusingly similar to the trade mark of a complainant, provided it has not been registered with the [c]omplainant’s trade mark in mind.” See *Admiral Insurance Services Limited v. Mr. Adam Dicker*, WIPO Case No. [D2005-0241](#) (denying transfer of the domain name <elephants.com>).

Accordingly, the Panel finds that the Complainant failed to establish the second element of paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

For similar reasons the Complainant failed to meet its burden of proof under paragraph 4(a)(iii).

Bad faith registration is found when the Respondent targets the Complainant or its trademark in registering the Disputed Domain Name. Here, the Complainant has not provided evidence that the Respondent targeted the Complainant or its CONSUMER REPORTS Mark when the Respondent registered the Disputed Domain Name. See *Tambour Ltd v. Alexander Lerman*, WIPO Case No. [D2019-0229](#). As such, the Complainant has failed to meet its burden of proving the Respondent's bad faith because, as stated earlier in the Decision, the Complainant does not provide any concrete proof indicating that the Respondent's motivation in registering or using the Disputed Domain Name was to target, profit from or exploit the Complainant's trademark.

Accordingly, the Panel finds that the Complainant failed to establish the third element of paragraph 4(a) of the Policy.

In reaching its Decision, the Panel recognizes that panels in a number of cases, including several brought by this Complainant, have found a lack of legitimate interests and bad faith based exclusively, or almost exclusively, upon the registrant's incorporating a well-known mark into the domain name at issue. See, e.g., *Consumer Reports, Inc. v. That Hoang Van*, WIPO Case No. [D2022-4551](#) (<consumerreportsbestreviews.com>); *Consumer Reports, Inc. v. Artur Solovev*, WIPO Case No. [D2022-0558](#) (<theconsumerreports.com>); see also [WIPO Overview 3.0](#), section 3.1.4 ("Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."). Many of those cases turn on factual circumstances absent in this proceeding, particularly copying or mimicry of the complainant's website or obviously improper use such as pornography. Others are default cases. Here, in the Panel's view, the Complainant's dearth of proof, combined with evidence of a credible alternative, overcome any presumption of bad faith and dictate a different result.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Lynda M. Braun/*  
**Lynda M. Braun**  
Presiding Panelist

*/Clark W. Lackert/*  
**Clark W. Lackert**  
Panelist

*/Richard G. Lyon/*  
**Richard G. Lyon**  
Panelist  
Date: May 2, 2023