

ADMINISTRATIVE PANEL DECISION

Enrico Coveri S.R.L. v. Enrique Torres, E-Comstore
Case No. D2023-2789

1. The Parties

The Complainant is Enrico Coveri S.R.L., Italy, represented by Bugnion S.p.A., Italy.

The Respondent is Enrique Torres, E-Comstore, United States of America.

2. The Domain Name and Registrar

The disputed domain name <coverishop.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 4, 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 (Contact Privacy Inc. Customer 0149325198) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 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 July 13, 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 July 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2023. The Respondent sent informal email communications to the Center on July 15, 2023 and July 24, 2023 requesting to schedule a call with the Complainant. On August 9, 2023, the Center notified the parties of the Commencement of Panel Appointment Process.

The Center appointed Zoltán Takács as the sole panelist in this matter on August 18, 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.

On August 20, 2023 the Respondent sent an email to the Complainant asking that the matter be clarified via telephone. In its August 21, 2023 dated email the Complainant advised the Respondent that the merits of its claim pertaining the case are clearly outlined in the Complaint, which the Respondent is in receipt of.

4. Factual Background

The Complainant is an Italian fashion company founded in 1986 by the prominent fashion designer Enrico Coveri.

The Complainant is selling its ENRICO COVERI branded fashion items in Italy and internationally, either directly, or through various licensing programs.

The Complainant is among others owner of the International Trademark Registration No. 482460 for the word mark COVERI, registered since January 7, 1984 for variety of goods, mostly fashion items.

The Complainant owns the domain name <enricocoveri.com>, which was registered on August 24, 2006 and resolves to its principal website.

The disputed domain name was registered on September 27, 2017 and resolves to a website that copies the content from the Complainant's official website (including its trademark, signature logo and imagery) to a large extent and purports to sell the Complainant's products.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- the disputed domain name, which fully incorporates its COVERI trademark, is confusingly similar to it because the addition of the term "shop" to the trademark in the disputed domain name is not sufficient to distinguish the disputed domain name from the trademark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name, and
- the use of its trademark, logo and imagery on the website at the disputed domain name shows the Respondent's awareness of its trademark at the time of registration of the disputed domain name as well as the Respondent's intent to deceive consumers into believing that it is a website operated by the Complainant.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

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

As set out above, the Respondent sent an informal email to the Complainant requesting clarification about the dispute at issue as well an informal email to the Center requesting arrangement of a conference call.

Since the Respondent did not reply to the Complainant's contentions the Center has proceeded with the Panel Appointment Process, following which the Respondent has engaged in email communication with the Complainant. This exchange of emails included the Respondent's request for clarification of the matter and the Complainant's response as set out above.

The Respondent's informal emails sent to the Center and to the Complainant add nothing to the case and the Panel is not inclined to accept these emails into the record.

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the 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 domain name; and
- (iii) the 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 Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the disputed domain name is confusingly similar to the mark for the purposes of the Policy.

The entirety of the mark is reproduced within the disputed domain name. While the addition of other terms (in this case "shop") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7 and 1.8.

Based on the available record, 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 the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with

relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.;
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not 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 trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4, and
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

The Respondent has not only failed to respond and disclose its relationship (or lack of thereof) with the Complainant, but is actively impersonating the Complainant. As shown by the Complainant, the Respondent is using the disputed domain name to confuse Internet users presumably looking for the Complainant through redirecting them to its own website, which is extensively displaying the Complainant's trademark, its signature logo and related imagery without any authorization, and purportedly offers for sale the Complainant's products. UDRP panels have categorically held that use of a domain name for illegal activity, such as impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, 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 a domain name in bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

In the present case, the Panel notes that the Respondent reproduced the Complainant's distinctive trademark in the disputed domain name and is using the Complainant's signature logo, imagery and product photos on the website at the disputed domain name. Thus, the Respondent obviously had full knowledge of

the Complainant's business and trademark at the time of registration of the disputed domain name and had registered it in order to target the Complainant and its trademark through impersonation or false association. [WIPO Overview 3.0](#), section 3.2.1. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <coverishop.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: August 31, 2023