

ADMINISTRATIVE PANEL DECISION

Breedon Group plc. v. Michelle Larson
Case No. D2023-3072

1. The Parties

The Complainant is Breedon Group plc., Jersey, represented by SafeNames Ltd., United Kingdom.

The Respondent is Michelle Larson, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <breedongroup.com> (the "Disputed Domain Name") is registered with Wild West Domains, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 18, 2023. On July 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 20, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 21, 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 24, 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 August 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 8, 2023.

The Center appointed Mariia Koval as the sole panelist in this matter on September 12, 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, founded in 2010, is a construction materials group headquartered in England, United Kingdom and is an AIM-listed company under the London Stock Exchange. The Complainant produces cement, construction aggregates, asphalt, ready-mixed concrete, bitumen and other construction materials. With around 3,700 employees located across the British Isles, the Complainant is the steward of one billion tons of mineral reserves and resources, and has extensive haulage infrastructure. As a result of its commercial success, the Complainant has become the largest independent construction materials group in the United Kingdom.

The Complainant is the owner of a number of BREEDON trademark (the “BREEDON Trademark”) registrations in multiple jurisdictions, among which are:

Trademark	Country/Register	Registration No.	Registration Date	International Class
BREEDON	United Kingdom	UK00003161238	July 29, 2016	6, 7, 12, 19, 37, 39
BREEDON	United Kingdom	UK00003558021	April 23, 2021	6, 7, 12, 19, 37, 39
BREEDON	European Union	018341835	May 22, 2021	6, 7, 12, 19, 37, 39

The Complainant operates the domain name <breedongroup.com>. The Complainant also established a social media presence and uses the BREEDON Trademark to promote its goods and services on social-media platforms such as Facebook, LinkedIn and X.

The Disputed Domain Name was registered on September 1, 2022. As at the date of this decision and when the Complaint was filed, the Disputed Domain Name resolves to inactive website.

The Complainant sent a cease and desist letter to the Respondent on June 16, 2023, but no response was received from the Respondent.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that the Disputed Domain Name is confusingly similar to its BREEDON Trademark in view of the Disputed Domain Name contains the Complainant’s BREEDON Trademark in its entirety with addition of an extra letter “e” and the word “group”. Moreover, the Complainant highlights that its company name is “Breedon Group”, thanks to its various commercial locations and acquired companies.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. To the best of the Complainant’s knowledge, the Respondent does not have any rights to the BREEDON Trademark or any other term used in the Disputed Domain Name. Neither has the Respondent received any license from the Complainant to use any domain names featuring the BREEDON Trademark.

The Complainant submits that there is no evidence showing that the Respondent has been using, or preparing to use, the Disputed Domain Name in connection with a *bona fide* offering of goods and services since its registration. Currently, the Disputed Domain Name does not resolve to a website and is therefore not offering any goods or services. Moreover, the Respondent may be putting the Disputed Domain Name to active use through emails. While the Complainant has not received emails emanating from the Disputed

Domain Name, there is evidence of MX records (Annex 14 to the Complaint), that means the Respondent has implemented the technical capability to send and receive emails from an address "[...].@breedongroup.com". Given the confusingly similar nature of the Disputed Domain Name with the BREEDON Trademark and the Complainant's official domain name, any emails coming from the address "[...].@breedongroup.com" would cause a high risk of consumer confusion.

The Complainant further submits that the Respondent is not known, nor has it ever been known under "Breedon" or "Breedon Group". The BREEDON Trademark is distinctive and not used in commerce other than by the Complainant. Therefore, there is no plausible reason for the registration of the Disputed Domain Name other than to take advantage of the goodwill and valuable reputation attached to the BREEDON brand. The Respondent has no connection or affiliation with the Complainant and has not received any license or consent to use the BREEDON Trademark in any way.

Also, the Complainant claims that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. As stated above, the Disputed Domain Name is held passively. The Disputed Domain Name consists of the Complainant's BREEDON Trademark in its entirety along with an additional letter "e" and the term "group". This closely resembles the Complainant's official domain name. There is no other alternative dictionary or generic meaning to the term "Breedon Group". These circumstances evidence that the Respondent's intention is to impersonate the Complainant and create a likelihood of confusion with the Complainant's BREEDON Trademark.

The Complainant contends that the Respondent registered and is using the Disputed Domain Name in bad faith based on the following:

- the Complainant's earliest BREEDON Trademark registration predates the creation date of the Disputed Domain Name by six years;
- the Complainant has accrued substantial goodwill and recognition since the Complainant's establishment in 2010; the BREEDON Trademark has gained a significant reputation in the aggregate industry;
- anyone who has access to the Internet can find the Complainant's BREEDON Trademark on public trademark databases;
- to date, results on popular search engines such as Google for the term "BREEDON" or "Breedon Group" list the Complainant's brand and services as the first result;
- the Respondent has registered the Disputed Domain Name to target the Complainant's BREEDON Trademark intentionally. It is inconceivable that the Respondent has chosen to register the Disputed Domain Name without knowing of, and targeting, the Complainant;
- a cease and desist letter was sent to the Respondent via email on June 16, 2023, in order to put the Respondent on notice of the Complainant's BREEDON Trademark and with a view to resolving the matter amicably. The Respondent was given the opportunity to provide evidence of any actual or contemplated good faith use but chose not to respond; and
- the high risk arises for the Complainant's customers on receipt of emails from the Disputed Domain Name. Given the evidently implied affiliation with the BREEDON Trademark, the Disputed Domain Name in the hands of the Respondent could be used for impersonation.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant is the owner of the BREEDON Trademark for more than six years.

The Disputed Domain Name reproduces the BREEDON Trademark in its entirety with the addition of letter “e”, as well as the term “group” and the generic Top-Level Domain (“gTLD”) “.com”. According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8, 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. Moreover, the Disputed Domain Name appears to be a typical example of typosquatting, *i.e.*, a misspelling of the Complainant’s BREEDON Trademark. According to the [WIPO Overview 3.0](#), section 1.9, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. The Panel finds that addition of one more letter “e” and the term “group” in this case does not prevent the Disputed Domain Name from being confusingly similar to the Complainant’s BREEDON Trademark.

The gTLD “.com” should be disregarded under the confusing similarity test as a standard registration requirement. See the [WIPO Overview 3.0](#), section 1.11,1.

In light of the above, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s BREEDON Trademark, and that the Complainant has established the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy. The Complainant has never authorized in any way, licensed, or permitted the Respondent to use its BREEDON Trademark.

In accordance with section 2.1 of the [WIPO Overview 3.0](#) while the overall burden of proof in UDRP proceedings is on the Complainant, the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. If such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name. If the Respondent fails to come forward with such relevant evidence, the Complainant is generally deemed to have satisfied the second element.

Taking into account the facts and arguments set out above, the Panel finds that the Complainant has made a *prima facie* case. The Respondent registered the Disputed Domain Name more than six years after the BREEDON Trademark had been registered. There is no evidence that the Respondent owns any “Breedon” trademark, nor that it is commonly known by the Disputed Domain Name. Moreover, the Respondent has failed to come forward with any evidence to rebut such *prima facie* case.

Further, the Panel also accepts that the use of the Disputed Domain Name does not constitute a legitimate noncommercial or fair use. Namely, at the date of the Complaint and at the date of this decision the Disputed Domain Name resolves to inactive website. Moreover, according to the evidence presented by the Complainant (Annex 14 to the Complaint) the Disputed Domain Name has active MX records, which evidences a likelihood of additional bad-faith use of the Disputed Domain Name to engage in fraudulent email or phishing communications.

Also, given the typosquatting nature of the Disputed Domain Name, the construction of the Disputed Domain Name is likely to mislead or cause confusion, which was likely the main intent of the Respondent when registering the Disputed Domain Name, which cannot amount to fair use nor confer rights or legitimate interests upon the Respondent.

There is no evidence that the Respondent is commonly known by the Disputed Domain Name or any similar name.

The Respondent neither responded to the Complainant's cease and desist letter nor to the Complaint, and did not participate in this proceeding, respectively, the Respondent did not present any evidence for supporting any rights or legitimate interests in the Disputed Domain Name.

In view of the foregoing, the Panel finds that the Respondent lacks rights or legitimate interests in the Disputed Domain Name and that the Complainant succeeds under the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy indicates some circumstances, 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:

“(i) circumstances indicating that you [respondent] 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 online 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.”

The Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. The Complainant's BREEDON Trademark has been existing for quite a long time. The Panel notes that the Complainant's registration of its BREEDON Trademark predates the registration date of the Disputed Domain Name. The fact that the Disputed Domain Name comprises the entirety of the Complainant's BREEDON Trademark especially with the addition of the term “group”, that together is identical to the Complainant's company name, indicates that the Respondent was very well familiar with the Complainant and its business when registering the Disputed Domain Name.

The Panel notes that the Disputed Domain Name does not resolve to an active website. This does not prevent the Panel in finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)).

The Panel in particular notes the Complainant's allegation that the Respondent has configured MX records for the Disputed Domain Name, suggesting an intention to use the Disputed Domain Name for illegal purposes. Despite the record in this case contains no evidence of illegal behavior, the configuration of MX records presents the potential for an email phishing scheme impersonating the Complainant. The use of the

Disputed Domain Name, that is confusingly similar to the BREEDON Trademark and that is almost identical to the Complainant's company name, in emails which do not originate with the Complainant presents a risk to the reputation of the Complainant's BREEDON Trademark and business. The Respondent has not rebutted that it may engage in this practice, which is noteworthy given the configuration of MX records for the Disputed Domain Name.

Moreover, the Disputed Domain Name, incorporating the Complainant's BREEDON Trademark in its entirety with intentional addition of the additional letter "e", is clearly deceptive for Internet users. This also indicates that the Respondent was well aware of the Complainant's BREEDON Trademark when registering the Disputed Domain Name.

Given the use of the Disputed Domain Name, as further described above, the Respondent obviously chose to register the Disputed Domain Name, which is a misspelling of the Complainant's BREEDON Trademark, for the only purpose of misleading unsuspecting Internet users by creating a likelihood of confusion with the Complainant's BREEDON Trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's emails.

In accordance with section 3.6 of the [WIPO Overview 3.0](#), there are recognized legitimate uses of privacy and proxy registration services; the circumstances in which such services are used, including whether a respondent is operating a commercial and trademark-abusive website, can however impact a UDRP panel's assessment of bad faith. The Panel considers that, taking into account all circumstances of this case, the Respondent's use of privacy service constitutes further evidence of bad faith registration and use of the Disputed Domain Name.

Finally, the Respondent neither responded to the Complainant's cease and desist letter nor the Complainant's contentions and did not participate in this proceeding at all. Previous UDRP panels have considered that a respondent's failure to respond to a complaint supports an inference of bad faith, see e.g., *Champagne Louis Roederer (CLR) v. Global Web Development, LLC*, WIPO Case No. [D2004-1073](#).

In view of the foregoing, the Panel finds that the paragraph 4(a)(iii) of the Policy has been satisfied by the Complainant.

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, <breedongroup.com>, be transferred to the Complainant.

/Mariia Koval/

Mariia Koval

Sole Panelist

Date: September 26, 2023