

ADMINISTRATIVE PANEL DECISION

Rough Country, LLC v. Gary Moehnke, Rough Country ATV
Case No. D2023-3921

1. The Parties

The Complainant is Rough Country, LLC, United States of America (“United States”), represented by Fredrikson & Byron, P.A., United States.

The Respondent is Gary Moehnke, Rough Country ATV, United States.

2. The Domain Name and Registrar

The disputed domain name <roughcountryatvtires.com> is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 19, 2023. On September 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 26, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 27, 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 amendment to the Complaint on October 2, 2023.

The Center verified that the Complaint together with the amendment to 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 October 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 26, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on October 31, 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 parts retailer in the automotive, all-terrain vehicle (“ATV”) and utility task vehicle (“UTV”) space. Originally producing off-road shock absorbers and steering stabilizers for Jeeps and trucks, the Complainant asserts that it now offers more than 6,000 products, including more than 300 products for use with ATVs and UTVs. It owns the mark ROUGH COUNTRY, which it uses in connection with a wide variety of motor vehicle products and retail services related to such products, and for which it enjoys the benefits of registration (e.g., United States Reg. No. 1,006,015, registered March 4, 1975).

According to the Whois records, the disputed domain name was registered on May 12, 2023. The Respondent has used the disputed domain name to set up a website that purports to promote an ATV repair shop located in Oregon, United States. The site features a form that enables visitors to the site to contact the Respondent for a quote for services. The Panel takes particular note that the “SERVICES” listed on the home page prominently includes “TIRES AND SUSPENSION” which in turn includes “Tire replacement, suspension replacement & modifications”.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the ROUGH COUNTRY mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the ROUGH COUNTRY mark in its entirety with the terms “atvtires”, which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s ROUGH COUNTRY mark. See [WIPO Overview 3.0](#), section 1.8. The ROUGH COUNTRY mark remains recognizable for a finding of confusing similarity under the Policy.

Accordingly, the Panel finds that the Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts that: (1) the disputed domain name promotes or suggests a connection or relationship between the Respondent and the Complainant where none exists, (2) the Complainant has never authorized the Respondent to register or use the disputed domain name or to provide any goods or services for the Complainant, (3) there is no connection or relationship or any kind or nature between the Complainant and the Respondent, (4) the unauthorized registration of the Complainant’s trademark in the disputed domain name undermines a claim of *bona fide* use under the Policy, and (5) the Complainant believes that the Respondent chose the disputed domain name because of the reputation of the Complainant.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent’s favor. Moreover, the Panel finds that the disputed domain name is inherently misleading. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent’s bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent “[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent’s] website or other online location, by creating a likelihood of confusion with complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [respondent’s] website or location or a product or service on [the respondent’s] website or location”.

The Complainant argues that (1) the Respondent is using the Complainant’s mark in the disputed domain name as a principal identifier of the Respondent’s website and services, and (2) by using the disputed domain name and creating a likelihood of confusion with the Complainant’s marks as to the source, sponsorship, affiliation, or endorsement of the Respondent’s services, the Respondent has intentionally attempted to attract visitors to its website or location for commercial gain.

The Respondent has not provided any evidence to contradict these assertions of the Complainant. The Panel credits the Complainant’s assertions and accordingly finds that they support the argument that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has established this third element under the Policy.

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

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: November 10, 2023