

## **ADMINISTRATIVE PANEL DECISION**

Discover Financial Services v. Carolina Rodrigues, Fundacion Comercio Electronico

Case No. D2024-0651

### **1. The Parties**

The Complainant is Discover Financial Services, United States of America ("United States"), represented by Elster & McGrady LLC, United States.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

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

The disputed domain name <discovervcard.com> is registered with GoDaddy.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 12, 2024. On February 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 2024, 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 (Registration Private / Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 15, 2024, 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 20, 2024.

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 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 13, 2024.

The Center appointed Gökhan Gökçe as the sole panelist in this matter on March 25, 2024. 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 credit card issuer and electronic payment services company that also offers personal and student loans, online savings products, certificates of deposit and money market accounts through a bank subsidiary.

The Complainant is the owner of several registered trademarks that comprise or incorporate the term “Discover”. Specific marks relied upon in the Complaint include:

- (i) United States registered trademark no. 1479946 for DISCOVER as a typed drawing in class 36, with a registration date of March 8, 1988, and declaring a first use in commerce of February 20, 1985;
- (ii) United States registered trademark no. 3025822 for DISCOVER as a typed drawing in class 36, with a registration date of December 13, 2005, and declaring a first use in commerce of February 20, 1985; and
- (iii) Panamanian registered trademark no. 48093, for DISCOVER in class 36, with a registration date of May 5, 1989.

Pursuant to Annex 6 of the Complaint, the Complainant operates its website at “www.discover.com”, which can also be accessed through “www.discovercard.com”, where customers can log into their confidential accounts and where the Complainant provides consumer information about its goods and services.

The disputed domain name was registered on January 8, 2021. The Complainant has provided screenshots in Annex 8 of the Complaint, that shows the website resolving from the disputed domain name rotates to an array of third-party websites, such as a website displaying Discover and requiring an email address to continue to claim rewards, and a Google Chrome Security Check page.

At the time of the decision, the Panel cannot reach the website resolving from disputed domain name and receives a security warning indicating that the site is not secure.

#### **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 is confusingly similar to the DISCOVER trademarks because the DISCOVER trademark is fully incorporated within the disputed domain name with the addition of extra elements such as a letter (e.g., “v”) and an industry-specific term, “card”. The Complainant asserts that the additional term only makes the disputed domain more confusingly similar. Specifically, because the Complainant trades in credit cards, debit cards, and other stored value cards and related financial services, the disputed domain name’s addition of the term “card” creates even stronger conditions for consumer confusion. Additionally, the Complainant asserts that the letter “v” is directly adjacent to the letter “c” on a standard English alphanumeric keyboard. Therefore, there is a significant chance that a consumer’s typographical error in attempting to type in the Complainant’s domain name could result in the consumer instead typing and being directed to the disputed domain name.

Further, the Complainant contends that the Respondent lacks rights or a legitimate interest in the disputed domain name, is not making a legitimate noncommercial or fair use of the disputed domain name, and is not commonly known by any of the DISCOVER trademarks or variations thereof. The Complainant contends

that the Respondent's use of the disputed domain name to mislead Internet users is not a bona fide or legitimate business and is not a noncommercial or fair use of the disputed domain name. The Complainant has not granted the Respondent any license, permission, or authorization to use the DISCOVER trademarks in any domain name.

The Complainant also contends that the Respondent would have no reason to register the disputed domain name other than to trade off the reputation and goodwill of the DISCOVER trademarks and to disrupt the Complainant's business, which evidences bad faith registration, and that the Respondent's use of the disputed domain name is evidence of bad faith use.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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.

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 entirety of the mark is reproduced within the disputed domain name. Therefore, the Panel finds the DISCOVER mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is also well accepted that a generic Top-Level Domain, in this case ".com", is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.

Although the addition of other terms here, "v" and "card" may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 1.8.

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.

Although 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 difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control 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 (although the burden of proof always remains on the complainant). 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 available records, 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 such as those enumerated in the Policy or otherwise.

It is uncontroverted that: (1) the Respondent, disclosed by the Registrar as "Carolina Rodrigues, Fundacion Comercio Electronico", has not been commonly known by either Discover nor any variations thereof and has never used any trademark or service mark relevant to the disputed domain name by which it may have been known; (2) the Complainant has not granted the Respondent any license, permission, or authorization by which it could own or use any domain name registrations which incorporate the DISCOVER trademarks; and (3) the Respondent's use of the disputed domain name to resolve to a rotating array of third-party websites, such as a website displaying Discover and requiring an email address to continue to claim rewards, and a Google Chrome Security Check page, does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use.

Moreover, given the composition of the disputed domain name, wholly incorporating the Complainant's trademark with the addition of the letter "v" and the term "card", and the letter "v" is directly adjacent to the letter "c" on a standard English alphanumeric keyboard, it is likely that an Internet user attempts to type in the Complainant's domain name <discovercard.com> could result in typing and being directed to the disputed domain name. In this regard, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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 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.

In the present case, the Panel notes that the Respondent's use of the disputed domain name evidences a bad faith attempt to disrupt the business of Complainant and to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the DISCOVER trademarks.

The Panel notes that the Respondent registered the disputed domain name long after the Complainant began using the trademarks and long after the trademarks became well-known internationally. Adding the letter "v" and the term "card" (a term describing an aspect of the Complainant's business) to the DISCOVER trademark indicates that it is likely that the Respondent was aware of that trademark and the Complainant's business and the Complainant operates under that the domain name <discovercard.com> when registering the disputed domain name. Thus, the Panel concludes that Respondent registered the disputed domain name in bad faith.

The Panel also observes that the Respondent named as "Carolina Rodrigues, Fundacion Comercio Electronico" has been the unsuccessful respondent in more than 320 other UDRP proceedings that are easily located by a search online. The Panel therefore finds that that the Respondent is a serial offender who deliberately targeted the Complainant and is engaged in a pattern of bad faith conduct ([WIPO Overview 3.0](#), section 3.1.2). In particular, the Respondent has registered many other domain names incorporating the Complainant's same DISCOVER trademarks. See *Discover Financial Services v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3107](#), *Discover Financial Services v. Registration Private, Domains By Proxy, LLC, DomainsbyProxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-0518](#), *Discover Financial Services v. Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico / Carolina Rodrigues, Privacy Limited*, WIPO Case No. [D2019-0666](#), *Discover Financial Services*

*v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-3114](#). For the purposes of the third element of the Policy, such pattern of abusive conduct shall be further evidence of bad faith.

With respect to the use of the disputed domain name in bad faith, the Panel finds that the Respondent has used the disputed domain name in order to generate traffic to other websites by creating a likelihood of confusion with the Complainant and deliberately misleading Internet users in a false belief that the disputed domain name is either owned or at least authorized by the Complainant.

In addition, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith.

The Panel finds that the Complainant has established the third element of the Policy

## **7. Decision**

For the foregoing reasons, in accordance with paragraph 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <discovervcard.com> be transferred to the Complainant.

*/Gökhan Gökçe/*

**Gökhan Gökçe**

Sole Panelist

Date: April 8, 2024