

ADMINISTRATIVE PANEL DECISION

Whirlpool Properties, Inc. and Maytag Properties, LLC v. Oleksandr Kliuiev,
Henryslist.com

Case No. D2024-2620

1. The Parties

The Complainants are Whirlpool Properties, Inc., United States of America (“United States”) (Complainant 1), and Maytag Properties, LLC, United States (Complainant 2), represented by ALG India Law Offices, India.

The Respondent is Oleksandr Kliuiev, Henryslist.com, Ukraine.

2. The Domain Names and Registrar

The disputed domain names <amanaappliance.support>, <jennairappliance.support>, <maytagappliance.support>, and <whirlpoolappliance.support> are registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 26, 2024. On June 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 28, 2024, the Registrar transmitted by email to the Center its verification response disclosing additional registrant and contact information for the disputed domain names which differed from the named Respondent (DATA REDACTED / REDACTED FOR PRIVACY, Henryslist.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 4, 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 July 8, 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 July 16, 2024. In accordance with the Rules, paragraph 5,

the due date for Response was August 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 16, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on September 11, 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. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel has reached this conclusion in part because the Panel recognizes that the Center employed all reasonably available means calculated to achieve actual notice to the Respondent.

In particular, the Center successfully sent the Notification of the Complaint to the email address disclosed for the Respondent by the Registrar in its Registrar Verification Response. There is no indication that the email notification has not been successfully delivered.

Furthermore, the Panel notes that, as specified by the Rules at paragraph 2 (a) "Communications", the Center sent the Written Notice of the Complaint to the Respondent's address in Ukraine, as per the information disclosed by the Registrar. Postal notification is reported to have been delivered on August 19, 2024.

In addition, the Center sent the Written Notice of the Complaint to the address (located in New York, USA) identically featured, as per the Complaint, on each of the websites to which the four disputed domain names resolve. The notice could not be delivered due to a "bad address".

Further email notifications sent to the email addresses provided by the Complainant under paragraph 3(b)(v) of the Rules and to the postmaster email addresses failed.

Finally, the Panel notes that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain names in bad faith.

The Panel therefore concludes that the Respondent has been given a fair opportunity to present his case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainants (Whirlpool Properties, Inc. and Maytag Properties, LLC) are subsidiaries of Whirlpool Corporation, one of the world's largest home appliance makers which was founded well over a century ago in 1911 (through its predecessor-in-interest).

It further results from the Complainants' documented allegations that Complainant 1 (Whirlpool Properties, Inc.) is the registered owner of an international portfolio of trademarks consisting of the verbal element WHIRLPOOL. In particular, the Complaint is based on the following trademarks for WHIRLPOOL (verbal):

- (i) United States trademark, registered under No. 581480 on October 27, 1953 for goods in classes 7 and 11;
- (ii) European Union trademark, registered under No. 000095950 on December 8, 1999 for goods and services in classes 7, 11 and 37.

In addition, Complainant 2 (Maytag Properties, LLC) is the registered owner of an international portfolio of verbal trademarks consisting of the terms MAYTAG, AMANA and JENNAIR:

- (i) United States trademark for MAYTAG, registered under No. 2638631 on October 22, 2002 for services in class 37;
- (ii) European Union trademark for MAYTAG, registered under No. 000028969 on March 4, 1999 for goods in classes 7, 9 and 11;
- (iii) United States trademark for AMANA, registered under No. 3059004 on February 14, 2006 for goods in class 11;
- (iv) United States trademark for JENNAIR, registered under No. 5176649 on April 4, 2017 for goods in class 11;
- (v) European Union trademark JENNAIR, registered under No. 018364544 on May 18, 2021 for goods in class 9.

All above mentioned trademarks have duly been renewed and are in force.

The four disputed domain names have been registered on the same day, i.e. December 19, 2023. They resolve to websites which are identically purporting to offer allegedly specialized repair services and customer care for the Complainants' products WHIRLPOOL, MAYTAG, AMANA and JENNAIR ("We are the [trademark] specialist... Our technicians are factory trained"). However, as it results from the Complainants' undisputed allegations, warranty services for all products covered by the aforementioned marks are covered exclusively by Whirlpool's Service Providers and the Respondent is not such a Service Provider.

6. Parties' Contentions

A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainants contend that:

- (i) the disputed domain names are confusingly similar to the Complainants' trademarks which are entirely included in said domain names. The mere addition of the descriptive and generic English dictionary term "appliance" is not sufficient to avoid confusion;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain names. According to the Complainants, Respondent is not commonly known by the disputed domain names, and it is not authorized or licensed by the Complainants to use their trademarks as part of any domain name. Furthermore, the Respondent cannot claim any legitimate, noncommercial or fair use of the disputed domain names, because

the disputed domain names are used to create a false association with service providers or retailers associated with the Complainants' offering;

(iii) the disputed domain names were registered and are being used in bad faith. According to the Complainant, the Respondent had prior and undeniable knowledge of Complainants and their marks at the time of registering the disputed domain names and hosting websites thereat. Furthermore, the lack of bona fide offerings or business on the websites connected to the disputed domain names indicate bad faith. Finally, there are false and misleading assertions on the websites, the Whois records contain masked or incomplete information, and the Respondent appears to have engaged in a pattern of conduct.

B. Respondent

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

7. Discussion and Findings

7.1. Procedural Issues

The Complaint was jointly filed by two Complainants, Whirlpool Properties, Inc. and Maytag Properties, LLC.

As set forth in section 4.11.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation."

The Panel acknowledges that the Complainants have a corporate connection and therefore a specific common grievance against the Respondent. In addition, the Respondent, by registering four domain names composed following the same pattern (trademark followed by "appliance.support") and resolving to the same web content (featuring the respective trademarks) has engaged in common conduct that affects the Complainants in a similar fashion. Against this background, the Panel does not see reasons why a consolidated Complaint brought by the Complainants against a single Respondent would not be fair and equitable. Moreover, the Respondent failed to come forward with any allegations or evidence to object the consolidation. For reasons of procedural efficiency, fairness and equity the Panel therefore accepts the joint Complaint.

Finally, the Panel remarks that according to paragraph 3(c) of the Rules a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. It results from the Registrar verification response that the four disputed domain names are registered by the same domain name Registrant, i.e. the Respondent.

7.2. Substantive Issues

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint 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". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

(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

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 3.0](#), section 1.7.

The Complainants have shown rights in respect of trademarks or service marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds these marks are recognizable within the respective disputed domain names. In fact, said four domain names have similar composition which consists in placing the trademark in the first position followed by the term "appliance" and the Top-Level Domain ("TLD") ".support". Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.7.

The applicable TLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test, [WIPO Overview 3.0](#), section 1.11.

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 record, the Panel finds the Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

The Panel notes that the four disputed domain names are clearly constituted by the Complainants' registered trademarks and the English dictionary term "appliance", which is directly applicable to the products that the Complainants commercialize under the respective trademarks. Accordingly, the Panel holds that the composition of those disputed domain names carries a risk of implied affiliation: in fact, the Panel considers the additional term "appliance" is clearly referring to the Complainants' core field of commerce. Accordingly, in the Panel's view, the composition of the disputed domain names creates the false impression enhanced also by the use to which the disputed domain names have been put that the disputed domain names are officially related to the Complainants and host official websites promoting services connected to the Complainants' products. This effectively impersonates or suggests sponsorship or endorsement by the trademark owner and does therefore not constitute fair use, see [WIPO Overview 3.0](#) at section 2.5.1.

The lack of rights and legitimate interests is also confirmed by the content of the websites to which the disputed domain names resolve and which are purporting to offer allegedly specialized repair services and customer care for the Complainants' products respectively under the trademarks WHIRLPOOL, MAYTAG, AMANA and JENNAIR ("We are the [trademark] specialist... Our technicians are factory trained"). However, as it results from the Complainant's undisputed allegations, warranty services for all products covered by the aforementioned marks are covered exclusively by Whirlpool's Service Providers and the Respondent is not such a Service Provider.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith, [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that it results from the Complainants' documented allegations that the disputed domain names resolve to websites which are purporting to offer allegedly specialized repair services and customer care for the Complainants' WHIRLPOOL, MAYTAG, AMANA and JENNAIR products ("We are the [trademark] specialist... Our technicians are factory trained"), contrary to the fact, and do not accurately disclose lack of relationship with the Complainants. For the Panel, it is therefore evident that the Respondent knew the Complainants' trademarks when it registered the disputed domain names.

In addition, the further circumstances surrounding the disputed domain names' registration and use confirm the findings that the Respondent has registered and is using the disputed domain names in bad faith:

- (i) the composition of the four disputed domain names each of them exactly incorporating one of the Complainants' trademarks plus the descriptive term "appliance" which clearly refers to the Complainants' core business under those marks and which indicates an intention on the part of the Respondent to confuse users;
- (ii) the content of the websites to which the disputed domain names direct, each of them displaying one of the Complainants' trademark, and purportedly offering services connected to the products labelled respectively with said trademark;
- (iii) a clear absence of rights or legitimate interests; and
- (iv) the Respondent having been involved previously in at least one further UDRP case, where the transfer of the disputed domain name has been ordered and bad faith being found.

The Panel finds that the Complainant has established the third element of 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 names <amanaappliance.support>, <jennairappliance.support>, <maytagappliance.support>, and <whirlpoolappliance.support> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: September 25, 2024