

ADMINISTRATIVE PANEL DECISION

Dentsply Sirona Inc. v. up zhu
Case No. D2024-4638

1. The Parties

The Complainant is Dentsply Sirona Inc., United States of America ("United States"), represented by Schwegman Lundberg & Woessner, P.A., United States.

The Respondent is up zhu, China.

2. The Domain Name and Registrar

The disputed domain name <thecavitron.com> is registered with Name.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 11, 2024. On November 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 12, 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 (Unknown Registrant / Non-Public Data) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 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 November 22, 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 November 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 17, 2024.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on December 24, 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, Dentsply Sirona Inc., is a dental supply company with a history of being at the forefront to improve and advance dentistry, founded as Dentists' Supply Company in 1899 in New York City, New York, United States. The company that became Sirona Dental Systems was founded in 1877 in Erlangen, Germany. As a result of their merger in 2016, the Complainant has grown to become one of the world's largest manufacturers of professional dental products and technologies and claims to have operations in more than 40 countries, and a sales presence in more than 120 countries and also claims that every year the Complainant's products and solutions reach 600,000 dental professionals, who treat over 6,000,000 patients daily, which translates to a billion patients each year.

The Complainant is the owner of numerous trademark registrations worldwide for marks containing or consisting of CAVITRON covering its dental instruments, including the following:

United States Registration No. 620009 CAVITRON, registered on January 24, 1956, in class 10;

Canada Registration No. TMA627391 CAVITRON, registered on December 3, 2004, in class 10; and

European Union Trade Mark No. 002209815 CAVITRON, registered on June 20, 2002, in class 10.

In addition to adding copies of the relevant certificates of the above trademark registrations, the Complaint also includes a listing of other trademark registrations for CAVITRON registered in several jurisdictions around the world.

The Complainant operates a website at the domain name <cavitrondental.com>, which was registered on September 11, 2013.

The disputed domain name was registered on June 18, 2024, and resolves to a website that currently directs to a page that bears the CAVITRON mark and offers to sell CAVITRON-branded dental instruments.

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 Complainant's CAVITRON marks, merely adding the term "the" to the Complainant's CAVITRON marks.

Moreover, the Complainant has not given the Respondent authorization or license to use its registered or common law marks, and there exists no connection between the Parties. There is also no evidence that the Respondent has been commonly known by the disputed domain name or has any trademark or service mark rights to it.

As a result of intensive advertising and promotion and widespread use for 70 years, the consuming public recognizes the CAVITRON mark and associates it with the Complainant and its goods.

The disputed domain name resolves to a website that features identical products to those of the Complainant. Any use that shows an intention to trade on the Complainant's fame or reputation in the marketplace is not a bona fide offering of goods by the Respondent. Rather the Respondent registered the disputed domain name to set up a scheme to pass itself off as operating a business under a name identical to the Complainant's. Such fraudulent use can never confer rights or legitimate interests.

The Respondent's registration of the disputed domain name long after the Complainant registered its well-known trademark together with the Respondent's sole use of the disputed domain name to attract Internet users for commercial gain by creating a likelihood of confusion with the CAVITRON mark, shows bad faith on the part of the Respondent.

The public is likely to believe that there is some connection, sponsorship, affiliation, or association between the disputed domain name and the Complainant and its well-known CAVITRON mark.

The Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

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. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, "the", 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 1.8.

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 record, the Panel finds 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.

Panels have held that the use of a domain name for illegitimate activity, here, claimed impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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, 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.

The Panel is satisfied that the Respondent must have been aware of the Complainant's distinctive trademark CAVITRON mentioned in section 4 above (Factual Background) when it registered the disputed domain name on June 18, 2024. By that time, the Complainant had registered and widely used for decades the CAVITRON mark.

The Panel also finds that by registering the disputed domain name which includes the Complainant's trademark CAVITRON in its entirety the Respondent was targeting the Complainant and its business. The addition of the term "the" only contributes to confuse Internet users and leads them to think that the Respondent's website belongs to or is endorsed by the Complainant, with the intention to capitalize on the fame of the Complainant's trademark for its own benefit.

Further, the fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name, the nature of the disputed domain name, and the use of the disputed domain name to resolve to a website that shows the trademark CAVITRON with content and images taken from the Complainant's website and offering goods similar to those offered by the Complainant, and the failure to file a Response to the Complaint are indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Respondent registered and is using the disputed domain name in bad faith and 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 name <thecavitron.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: January 7, 2025