ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Lincoln Global, Inc. and The Lincoln Electric Company v. Murray Giles, Foundry Distilling Company LLC
Case No. D2025-0243

1. The Parties

Complainants are Lincoln Global, Inc. and The Lincoln Electric Company (collectively, "Complainant"), United States of America ("United States" or "U.S."), represented by CSC Digital Brand Services Group AB, Sweden.

Respondent is Murray Giles, Foundry Distilling Company LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <lincolnelectiric.com> (the "Domain Name") is registered with Hostinger Operations, UAB (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 22, 2025. On January 23, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 24, 2025, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Domain Admin Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to Complainant on January 27, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 30, 2025.

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 Respondent of the Complaint, and the proceedings commenced on January 31, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on February 21, 2025.

The Center appointed John C. McElwaine as the sole panelist in this matter on February 27, 2025. 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

Complainant is a global manufacturer of welding products and equipment, founded in 1895. Headquartered in Cleveland, Ohio, Complainant operates 71 manufacturing locations across 21 countries and maintains a worldwide network serving customers in over 160 countries.

Complainant owns the following relevant trademark registrations:

- LINCOLN ELECTRIC, U.S. Registration No. 2350082, registered May 16, 2000, in Class 09;
- LINCOLN ELECTRIC, U.S. Registration No. 2420805, registered January 16, 2001, in Class 35; and
- LINCOLN ELECTRIC, U.S. Registration No. 3114157, registered July 11, 2006, in Class 06.

Collectively, these registered trademark rights are referred to as the “LINCOLN ELECTRIC Mark”.

The Domain Name was registered on January 22, 2024. Based on the available record, the Domain Name was not actively being used and resolved to a Registrar parking page.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

With respect to the first element of the Policy, Complainant asserts ownership of multiple U.S. trademark registrations for the LINCOLN ELECTRIC Mark dating back to 2000. Additionally, Complainant has gained significant common law rights through continuous use since 1915, generating substantial sales and goodwill in the welding industry. Complainant contends that the Domain Name is a deliberate misspelling of Complainant’s trademark, constituting typosquatting.

With respect to the second element of the Policy, Complainant alleges that Respondent has no rights or legitimate interests in the Domain Name. Complainant has not licensed or authorized Respondent to use its marks. Complainant alleges that the Domain Name resolves to a Registrar parking page and that it is not actively being used. Complainant asserts that neither use establishes rights or legitimate interests.

With respect to the third element of the Policy, Complainant asserts bad faith registration and use based on multiple factors. First, Respondent registered the Domain Name in 2024, well after Complainant’s trademark rights were established. Second, Respondent failed to respond to three separate cease-and-desist letters. Third, the Domain Name is not actively being used. Fourth, Respondent employed a privacy service to hide its identity when registering the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4(a) of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

(i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;

(ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc*., WIPO Case No. D2009-1779; *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. D2007-0605; see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules, and applicable principles of law, the Panel's findings on each of the above-cited elements are as follows.

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 Complainant's trademark and the Domain Name. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0").

The Panel finds that Complainant has established rights in the LINCOLN ELECTRIC Mark through its U.S. trademark registrations. The Domain Name incorporates Complainant's mark with the addition of an extra letter "i" between "t" and "r" in the word "electric", creating "electiric". As discussed in 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". This type of typosquatting, specifically the addition or interspersion of letters, has been consistently found by panels to produce domain names that are confusingly similar to the marks which they mimic.

The spelling errors used in typosquatting, such as Respondent's insertion of an additional letter, are specifically designed to take wrongful advantage of Internet users who make typographical errors when entering domain names into their web browsers. Such intentional modifications to trademarks are commonly referred to as "typosquatting" or "typo-piracy", as such conduct seeks to wrongfully take advantage of errors by users in typing domain names into their web browser's location bar.

Accordingly, the Panel finds that Complainant has met its burden of showing that the Domain Name is confusingly similar to the LINCOLN ELECTRIC mark in which Complainant has valid subsisting trademark rights. The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Complainant must make a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name, after which the burden of production shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests. See section 2.1 of the WIPO Overview 3.0.

Here, Complainant has stated that it has not licensed or otherwise authorized Respondent to use its LINCOLN ELECTRIC Mark or to register domain names incorporating the mark. There is no evidence that

Respondent has been commonly known by the Domain Name or that Respondent has acquired any trademark rights in the term "Lincoln Electric". Respondent has not come forward with an explanation for choosing the Domain Name which consists of a typographic error of Complainant's LINCOLN ELECTRIC Mark.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy[1] or otherwise.

The Panel finds that Respondent's non-use of the Domain Name to resolve to a Registrar parking page does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use under the Policy. In this case, the potential for future use that infringes on Complainant's rights or could be used for fraud is evident.

The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. D2000-0007; *Ronson Plc v. Unimetal Sanayi ve Tic.A.S.*, WIPO Case No. D2000-0011. Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the domain name at issue. See *AREVA v. St. James Robyn Limoges*, WIPO Case No. D2010-1017; *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. D2003-0269.

Lastly, the Panel finds that Respondent is not making any use, let alone bona fide use, of the Domain Name under paragraph 4(c), as the Domain Name resolves to a Registrar parking page. It is well established that inaction or passive holding can, in certain circumstances, constitute bad faith use. See *CBS Broadcasting Inc. v. Edward Enterprises*, WIPO Case No. D2000-0242. Here, with no explanation from Respondent concerning its intent, and its misspelling of the word "electric", Respondent's passive holding of the Domain Name incorporating the LINCOLN ELECTRIC Mark does not amount to a bona fide use.

Based on the foregoing, Complainant has made a prima facie showing of Respondent's lack of any right or legitimate interest and Respondent has failed to come forward with evidence to rebut that showing. As provided for by paragraph 14 of the Rules, the Panel may draw such inference from Respondent's default as it considers appropriate. The Panel finds that Respondent does not have rights or legitimate interests in the Domain Name and that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can also be found where a respondent "knew or should have known" of a complainant's trademark rights and nevertheless registered a domain name in which they had no right or legitimate interest. See *Accor S.A. v. Kristen Hoerl*, WIPO Case No. D2007-1722. Here, the LINCOLN ELECTRIC Mark represents the goodwill of an alleged global manufacturer of welding company that has been in operation since 1911. Based on Complainant's submission, Respondent likely knew of Complainant's LINCOLN

[1] The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which a respondent could demonstrate rights or legitimate interests in a contested domain name: "(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

ELECTRIC Mark when it registered the Domain Name, which is a typo of Complainant's LINCOLN ELECTRIC Mark. See *WhatsApp Inc. v. Francisco Costa*, WIPO Case No. D2015-0909 (finding that "it is likely improbable that Respondent did not know about Complainant's WHATSAPP trademark at the time it registered the Disputed Domain Name considering the worldwide renown it has acquired amongst mobile applications, and the impressive number of users it has gathered since the launch of the WhatsApp services in 2009"). Based on Complainant's submissions, which were not rebutted or explained by Respondent, the Panel finds that Respondent knew or should have known of Complainant's LINCOLN ELECTRIC Mark, when it decided to register the Domain Name.

Further, there is no logical connection between the terms "Lincoln" and "electric" that could justify their use in the typo Domain Name to refer to something else. Without any explanation stating otherwise from Respondent, this makes the typosquatting allegation plausible. Typosquatting by an unaffiliated party itself presumptively creates bad faith. WIPO Overview 3.0, section 3.1.4.

Respondent's failure to respond to three separate cease-and-desist letters may properly be considered a factor in finding bad faith registration and use. Past panels have held that failure to respond to a cease-and-desist letter provides "strong support for a determination of 'bad faith' registration and use". See *Aktiebolaget Electrolux v. zhou lang,* WIPO Case No. D2013-1584 ("It is well established and accepted that failure to respond to cease and desist letters without legitimate reason may be evidence of bad faith registration and use").

Finally, Complainant contends that the Domain Name resolves to a Registrar parking page. Previous UDRP Panels have found that the non-use of a domain name, in this case a Registrar parking page, would not prevent a finding of bad faith under the doctrine of passive holding. See WIPO Overview 3.0, section 3.3.

Based upon the foregoing, the Panel finds that Respondent registered the Domain Name with knowledge of Complainant's mark and is using it in bad faith to intentionally attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant's mark as to source, sponsorship, affiliation or endorsement of Respondent's website, in violation of paragraph 4(b)(iv) of the Policy.

For the reasons set forth above, the Panel holds that Complainant has met its burden under paragraph 4(a)(iii) of the Policy and has established that Respondent registered and is using the Domain Name in bad faith.

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 Domain Name <lincolnelectiric.com> be transferred to Complainant.

/John C. McElwaine/
John C. McElwaine
Sole Panelist
Date: March 13, 2025