

ADMINISTRATIVE PANEL DECISION

Marcal Hickory LLC. v. Dmytro Shershen
Case No. D2025-0839

1. The Parties

The Complainant is Marcal Hickory LLC., United States of America, represented by Soteria LLC, United States of America ("USA").

The Respondent is Dmytro Shershen, Ukraine.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 28, 2025. On February 28, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 2, 2025, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 3, 2025, 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 March 3, 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 the Respondent of the Complaint, and the proceedings commenced on March 5, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 25, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 26, 2025. The Respondent then sent email communications to the Center on March 27 and 31, 2025 as well as on April 1 and 4, 2025 offering to transfer the disputed domain name to the Complainant but this transfer has not taken place.

The Center appointed Dawn Osborne as the sole panelist in this matter on April 9, 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

The Complainant is the owner of the trade mark VONDREHLE registered as trade mark registration number 3112015 in the USA for bathroom tissue and paper towels registered on July 4, 2006 with first use recorded as 1974.

The disputed domain name was registered January 9, 2025 and has been pointed to a site featuring the Complainant's mark in its logo form as a masthead and confusing wording to purport to be an official site of the Complainant.

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 trade mark containing it in its entirety and merely adding the generic word "the" and the gTLD ".com" which does not prevent said confusing similarity between the disputed domain name and the Complainant's mark.

The Respondent is not commonly known by the disputed domain name and is not authorised by the Complainant.

The web site connected with the disputed domain name uses the Complainant's mark in its logo form as its masthead and confusing wording to offer purport to offer competing services and products impersonating the Complainant. Since Internet users will be duped into believing the Respondent's site and the products on it are associated with the Complainant this is not a legitimate bona fide offering of goods or services or legitimate use. It is registration and use in fraudulent bad faith.

B. Respondent

The Respondent did not provide a formal Response to the Complainant's contentions. As recorded above the Respondent offered to transfer the disputed domain name to the Complainant in email correspondence with the Center, but this transfer has not taken place.

Notably, in the informal emails the Respondent objected to the Complainant's contentions and submitted that it had no bad faith or malicious intent.

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 trade mark 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 trade mark 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 generic word “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 illegal activity, here impersonation/passing off 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.

In the present case, the Panel notes that the Respondent has used the Complainant’s trade mark as a logo as a masthead and confusing wording on a web site to impersonate the Complainant. The use of the Complainant’s logo shows actual knowledge of the Complainant and its business, rights and services/products. The Respondent has intentionally caused confusion on the Internet with the Complainant’s trade mark for commercial gain and disrupted the business of the Complainant with competing behaviour, despite the Respondent’s claim that the disputed domain name was not used for commercial purposes or 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.

Panels have held that the use of a domain name for illegal activity, here impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 name <thevondrehle.com> be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: April 16, 2025