

ADMINISTRATIVE PANEL DECISION

Accenture Global Solutions Limited v. Michael Roper Case No. D2022-4201

1. The Parties

The Complainant is Accenture Global Solutions Limited, Ireland, represented by McDermott Will & Emery LLP, United States of America.

The Respondent is Michael Roper, United States of America.

2. The Domain Name and Registrar

The disputed domain name <formicary.net> is registered with DropCatch.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 5, 2022. On November 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 7, 2022, 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 (Private Registration, NameBrightPrivacy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 8, 2022 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 11, 2022.

The Center verified that the Complaint together with the amendment to 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 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 1, 2022. The Respondent sent email communications on November 8 and 14, 2022. The Center informed the Parties about the Commencement of Panel Appointment Process on December 2, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on December 9, 2022. 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 an international business that provides a broad range of services and solutions in strategy, consulting, digital, technology and operations under the name ACCENTURE and is the owner of the ACCENTURE trademark and company name, and marks fully incorporating the ACCENTURE trademark.

In January 2016, the Complainant acquired a company by the name of Formicary, a provider of consulting and systems integration services for trading platforms in the United Kingdom and North America. Pursuant to the Formicary acquisition, the Complainant is the owner of the FORMICARY trademark in the European Union and United Kingdom.

The Complainant is the owner of trademark registrations in the European Union and the United Kingdom for the mark FORMICARY as mentioned below:

- European Union Registration No. 005078803, registered on May 24, 2007.
- United Kingdom Registration No. UK00905078803, registered on May 24, 2007.

The Complainant also notes that between the years 2016 to 2022, the Complainant was the beneficial registrant of the disputed domain name, which was registered in the name of the Complainant's related company, Accenture Global Services Limited, for use in connection with the acquired Formicary company. The disputed domain name was recently allowed to lapse for non-renewal in August of 2022.

The disputed domain name was registered on September 11, 2022. The disputed domain name is currently not in use, however at some point before the filing of the Complaint it displayed the ACCENTURE logo and stated "Formicary is now part of Accenture".

5. Parties' Contentions

A. Complainant

The Complainant requests that the disputed domain name be transferred to the Complainant.

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the FORMICARY trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

The Complainant has provided screenshots of the official Formicary website previously featured at the disputed domain name, including a home page displaying the ACCENTURE logo and stating that "Formicary is now part of Accenture" dated July 9, 2016 as shown in the screenshots displaying the Wayback Machine timeline. The Complainant has also provided screenshots of the website at the disputed domain name registered by the Respondent and obtained on November 3, 2022, which are identical to the content appearing in the 2016 screenshots.

According to the Complaint, this replica website at the disputed domain name that prominently displays the ACCENTURE logo and states "Formicary is now part of Accenture" is an attempt for Respondent to pass itself off as Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, on November 8 and 14, 2022, the

Respondent required including the email of the Illuminatus Marketing's attorney in the communications. No more communications were received by the Respondent.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

(i) the 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 such domain name; and

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

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Complainant holds several valid FORMICARY trademark registrations, which precede the registration of the disputed domain name.

As numerous UDRP panels have held, where at least a dominant feature of the relevant trademark is recognizable in the domain name, it is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark. The disputed domain name is identical to the Complainant's trademarks since it incorporates the Complainant's FORMICARY trademark in its entirety.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed 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.

There is no evidence of the existence of any of those rights or legitimate interests.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks which precede the Respondent's registration of the disputed domain name. The Respondent is not using the disputed domain name which cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The Respondent registered the disputed domain name after it elapsed.

The Complainant has therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith has been considered by the Panel. These allegations have not been contested by the Respondent.

As indicated above, the Complainant's rights in the FORMICARY trademark predate the registration of the disputed domain name for several years. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the disputed domain name, as the Respondent included content in the disputed domain name related to the Complainant. Thus, the Respondent could not reasonably ignore the reputation of the products and services this trademark identifies. The Respondent in all likelihood registered the disputed domain name with the expectation of taking advantage of the reputation of the Complainant's trademark.

The Panel is of the view that that registering a domain name whose prior registration lapsed indicates bad faith on the part of the Respondent, in view of the length of time that the Complainant had previously registered and used the disputed domain name. In this case, the Complainant owned the disputed domain name containing its registered FORMICARY trademark for over six years before the Respondent registered the disputed domain name. Given the Complainant's ownership of the FORMICARY trademark, its prior ownership of the disputed domain name, and the Respondent's use of the disputed domain name to display the Complainant's logo and its former website content, there is absolutely no reason for the Respondent to have registered the disputed domain name other than to trade off of the reputation and goodwill of the Complainant's trademarks.

The disputed domain name is currently not being used by the Respondent. UDRP panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). This Panel also finds so under the circumstances of this case, particularly considering the well-known status of the Complainant's prior registered FORMICARY trademark.

The failure of the Respondent to formally answer the Complainant's contentions also suggests, in combination with other factors, bad faith on the part of the Respondent (*Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#)).

Therefore, taking all the circumstances into account and for all the above reasons, the Panel concludes that the Respondent has registered and is using the disputed 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 disputed domain name <formicary.net> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: December 30, 2022.