

ADMINISTRATIVE PANEL DECISION

Consumer Reports, Inc. v. That Hoang Van
Case No. D2022-4551

1. The Parties

The Complainant is Consumer Reports, Inc., United States of America (“United States”), represented by Cozen O’Connor, United States.

The Respondent is That Hoang Van, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <consumerreportsbestreviews.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 29, 2022. On November 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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 (Redacted For Privacy through Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 1, 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 December 1, 2022.

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”).

On December 2 and 3, 2022, the Respondent sent informal email communications to the Center, expressing wishes to settle the dispute. Accordingly, the Center sent a possible settlement email but the Complainant did not wish to suspend the proceeding.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 13, 2022. In accordance with the Rules,

paragraph 5, the due date for Response was January 2, 2023. The Respondent did not submit any formal response. The Center started the Commencement of Panel Appointment Process on January 4, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on January 11, 2023. 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers, or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to the Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules, and the Supplemental Rules and without the benefit of a formal response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is Consumer Reports, Inc., a United States non-profit consumer product testing and advocacy organization, owning several trademark registrations for CONSUMER REPORTS, among which:

- United States Trademark Registration No. 672,849 for CONSUMER REPORTS, registered on January 20, 1959;

- United States Trademark Registration No. 5,064,394 for CONSUMER REPORTS, registered on October 18, 2016.

The Complainant also operates on the Internet, its website being "www.consumerreports.org".

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on July 3, 2022, and it resolves to a website where reviews of consumer products are purportedly offered.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its trademark CONSUMER REPORTS, as the disputed domain name wholly incorporates the Complainant's trademark with the addition of the term "best reviews".

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The Respondent is using the disputed domain name for a website in which reviews of consumer products are purportedly offered, a business virtually identical to the Complainant's one, although the Complainant's reviews are independent and non-monetized or affiliated, while the Respondent's reviews are directing sales to Amazon for a profit.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark CONSUMER REPORTS is known in the field of consumer product reviews. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name with the purpose of intentionally attempting to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the disputed domain name's source, sponsorship, affiliation or endorsement, qualifies as bad faith registration and use.

B. Respondent

The Respondent has made no formal reply to the Complainant's contentions. However, as noted above, the Respondent submitted two email communications regarding possible settlement of the dispute.

6. Discussion and Findings

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

- (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.

A. Identical or Confusingly Similar

The Panel finds that the Complainant is the owner of the trademark CONSUMER REPORTS both by registration and acquired reputation and that the disputed domain name is confusingly similar to the trademark CONSUMER REPORTS.

Regarding the addition of the terms "best" and "reviews", the Panel notes that it is now well established that the addition of other terms (whether descriptive, geographical terms, letters, or otherwise) to a domain name does not prevent a finding of confusing similarity between the disputed domain name and the trademark (see, e.g., *Aventis Pharma SA., Aventis Pharma Deutschland GmbH v. Jonathan Valicenti*, WIPO Case No. [D2005-0037](#); *Red Bull GmbH v. Chai Larbthanasub*, WIPO Case No. [D2003-0709](#); *America Online, Inc. v. Dolphin@Heart*, WIPO Case No. [D2000-0713](#)). The addition of the terms "best" and "reviews" does not therefore prevent the disputed domain name from being confusingly similar to the Complainant's trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

It is also well accepted that a generic Top-Level Domain ("gTLD"), in this case ".com", is typically ignored when assessing the confusing similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is confusingly similar to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

- “(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.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is generally more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain name for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services. The disputed domain name is used for a website in which reviews of consumer products are purportedly offered, a business virtually identical to the Complainant’s one, although the Complainant’s reviews are independent and non-monetized or affiliated, while the Respondent’s reviews are directing sales to Amazon for a profit. The Respondent reproduces the Complainant’s trademark and attempts to impersonate the Complainant for purposes of misleading Internet users for the Respondent’s commercial advantage.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation (as well as the Respondent’s intention of taking unfair advantage of the likelihood of confusion between the disputed domain name and the Complainant). See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that “[...] for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be

evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [the Respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

(ii) that [the Respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent has] engaged in a pattern of such conduct; or

(iii) that [the Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] website or location or of a product or service on [the Respondent's] website or location."

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark CONSUMER REPORTS in the field of consumer product reviews is clearly established and the Panel finds that the Respondent likely knew of the Complainant and deliberately registered the disputed domain name, especially because the disputed domain name resolves to a website consisting of consumer product reviews.

The Panel further notes that the disputed domain name is also being used in bad faith since the Respondent, by providing the same or similar services as the Complainant in the website at the disputed domain name, is intentionally attempting to create a likelihood of confusion with the Complainant's trademark as to the disputed domain name's source, sponsorship, affiliation or endorsement.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain name in order to create confusion with the Complainant's trademark and attract, for commercial gain, Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which includes the Complainant's trademark in its entirety with the mere addition of the terms "best" and "reviews", further supports a finding of bad faith. See, [WIPO Overview 3.0](#), section 3.2.1.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

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 <consumerreportsbestreviews.com> be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: January 23, 2023