

ADMINISTRATIVE PANEL DECISION

Sealed Air Corporation (US) v. Mark Clapper, Clapper LLC
Case No. D2022-2410

1. The Parties

The Complainant is Sealed Air Corporation (US), United States of America, (“United States”) represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

The Respondent is Mark Clapper, Clapper LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <sealedairr.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2022. On July 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 5, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amended Complaint on July 7, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2022.

The Center appointed Lynda M. Braun as the sole panelist in this matter on August 4, 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 a multinational company headquartered in the United States that manufactures products in the field of food safety and security, facility hygiene, and product protection. The Complainant has used the SEALED AIR trademark internationally in connection with its goods for decades. The Complainant serves a diverse global customer base with a sales and distribution network reaching 114 countries/territories. The Complainant also operates in 45 other countries worldwide through the Complainant's various subsidiary companies. The Complainant has over 16,500 employees, with approximately 7,000 employees located in the United States, and 9,500 employees located in jurisdictions outside of the United States.

The Complainant owns numerous trademark registrations for SEALED AIR with the United States Patent and Trademark Office. The following are the United States trademarks, among others, including the following United States registrations that have become uncontestable under 15 U.S.C. § 1065: SEALED AIR, United States Registration No. 925,912, registered on December 21, 1971, in international class 16; SEALED AIR, United States Registration No. 1,580,890, registered on February 6, 1990, in international classes 1, 3, 7, 16, and 17; and SEALED AIR, United States Registration No. 2,534,715, registered on January 29, 2002, in international classes 10 and 17. In addition, the Complainant owns trademark registrations for the SEALED AIR trademark in numerous other jurisdictions worldwide.

The foregoing trademarks will hereinafter collectively be referred to as the "SEALED AIR Mark".

The Complainant owns the domain name <sealedair.com>, which resolves to the Complainant's official website at "www.sealedair.com" and which provides detailed information about the Complainant and its products. The Complainant has continually used the <sealedair.com> domain name since at least as early as January 17, 1998.

The Disputed Domain Name was registered on June 14, 2022, and resolves to a landing page provided by the Registrar, where it is passively held. The Respondent also had email servers associated with the Disputed Domain Name.

5. Parties' Contentions

A. Complainant

The following are the Complainant's contentions:

- the Disputed Domain Name is confusingly similar to the Complainant's SEALED AIR Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- the Disputed Domain Name was registered and is being used in bad faith;

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove the following three elements in order to prevail in this proceeding:

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

This element consists of two parts: first, does the Complainant have rights in a relevant trademark and, second, is the Disputed Domain Name identical or confusingly similar to that trademark. The Panel concludes that the Disputed Domain Name is confusingly similar to the SEALED AIR Mark.

It is uncontroverted that the Complainant has established rights in the SEALED AIR Mark based on its years of use as well as its registered trademarks for the SEALED AIR Mark in the United States and other jurisdictions worldwide. The consensus view is that “registration of a mark is prima facie evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive”. See *CWI, Inc. v. Domain Administrator c/o Dynadot*, WIPO Case No. [D2015-0734](#). The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the SEALED AIR Mark. Moreover, the registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1. Thus, the Panel finds that the Complainant has rights in the SEALED AIR Mark.

The Disputed Domain Name consists of the SEALED AIR Mark in its entirety, although misspelled by adding one letter, the letter “r” in “air”, and then followed by the generic Top-Level Domain (“gTLD”) “.com”. Such a minor modification to a trademark is commonly referred to as “typosquatting” and seeks to wrongfully take advantage of errors by a user in typing a domain name into a web browser. The misspelling of the Disputed Domain Name does not prevent a finding of confusing similarity to the SEALED AIR Mark. See [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”); see also *Silversea Cruises, Ltd. v. Whois Agent, Domain Protection Services, Inc. / Domain Vault, Domain Vault LLC*, WIPO Case No. [D2018-2306](#) (“The Domain Name [silverseas.com] is virtually identical to the SILVERSEA trademark but for the addition of the letter ‘s’ creating a plural version of the SILVERSEA trademark. The addition of the letter ‘s’ does not distinguish the Domain Name from the SILVERSEA trademark and is a common form of typosquatting.”).

Further, the addition of a gTLD such as “.com” in a domain name is technically required. Thus, it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11. Thus, the Panel concludes that the Disputed Domain Name is confusingly similar to the Complainant’s SEALED AIR Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

There is no evidence in the record suggesting that the Respondent has rights or legitimate interests in the Disputed Domain Name. The Complainant has not authorized, licensed, or otherwise permitted the Respondent to use the Complainant's SEALED AIR Mark. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name nor has the Respondent made any demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. The name of the Respondent has no apparent connection to the Disputed Domain Name that would suggest that it is related to a trademark or trade name in which the Respondent has rights.

Further, the Complainant does not have any business relationship with the Respondent and based on the use made of the Disputed Domain Name to resolve to an inactive landing page, the Panel finds that the Respondent is not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name.

Finally, the composition of the Disputed Domain Name, comprising the entirety of the SEALED AIR Mark, except with the addition of the letter "r", cannot constitute fair use here.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that, based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy as set forth below.

First, based on the circumstances here, the Panel concludes that the Respondent registered and is using the Disputed Domain Name in bad faith in an attempt to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's SEALED AIR Mark as to the source, sponsorship, affiliation or endorsement of the Disputed Domain Name's resolving webpage. The Respondent's registration and use of the Disputed Domain Name indicate that such registration and use had been done for the specific purpose of trading on the name and reputation of the Complainant and its SEALED AIR Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Second, the Panel concludes that the Respondent knew about the Complainant's rights in the SEALED AIR Mark when it registered the Disputed Domain Name, since it added the letter "r" to "air" to misdirect users from the Complainant's website to the Respondent's website by capitalizing on typing mistakes made by users. See *Nutricia International BV v. Eric Starling*, WIPO Case No. [D2015-0773](#). Considering the circumstances in this case, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's SEALED AIR Mark at the time the Respondent registered the Disputed Domain Name. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). Since the Respondent misspelled the Disputed Domain Name to misdirect users from the Complainant's website to the Registrar's landing page by capitalizing on potential typing mistakes, such conduct is evidence of bad faith. See *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) ("It is well-settled that the practice of typosquatting, of itself, is evidence of the bad faith registration of a domain name."). Therefore, it can be inferred that the Respondent had actual knowledge of the Complainant and its SEALED AIR Mark when it registered the confusingly similar Disputed Domain Name. UDRP panels have found that

the registration of a domain name that is confusingly similar to a well-known trademark by an unaffiliated entity can create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Third, inactive or passive holding of the Disputed Domain Name by the Respondent does not prevent a finding of bad faith. See *Advance Magazine Publishers Inc. and Les Publications Condé Nast S.A. v. ChinaVogue.com*, WIPO Case No. [D2005-0615](#); *Société pour l'Oeuvre et la Mémoire d'Antoine de Saint Exupéry – Succession Saint Exupéry – D'Agay v. Perlegos Properties*, WIPO Case No. [D2005-1085](#). It has long been held in UDRP decisions that the passive holding of a domain name that incorporates a well-known trademark without a legitimate purpose may indicate that the disputed domain name is being used in bad faith under paragraph 4(a)(iii) of the Policy. See *Telstra supra*; *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#). Here, the Disputed Domain Name currently resolves to an inactive landing page with no substantive content, and the Panel notes that the Complainant's use of the SEALED AIR Mark for 60 years, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the typosquatted Disputed Domain Name may be put, support a finding of bad faith.

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <sealedair.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: August 18, 2022