

ADMINISTRATIVE PANEL DECISION

Rubbermaid Incorporated v. Andrew Rdics

Case No. DAU2022-0035

1. The Parties

The Complainant is Rubbermaid Incorporated, United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Andrew Rdics, Australia.

2. The Domain Name and Registrar

The disputed domain name <rubbermaid.com.au> is registered with Domain Directors Pty Ltd trading as Instra.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 11, 2022. On November 11, 2022, the Center transmitted by email to Domain Directors Pty Ltd. a request for registrar verification in connection with the disputed domain name. On November 14, 2022, Domain Directors Pty Ltd. transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 15, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was December 5, 2022. On November 21, 2022, the Complainant requested a suspension of the proceeding. The Center notified the suspension of the proceeding on November 21, 2022, and the Complainant requested the reinstatement of the proceeding on December 16, 2022. The new due date for response was December 31, 2022. No response was received by the Center and as a result, on January 11, 2023, the Center sent a notification of commencement of the panel appointment process.

The Center appointed Alistair Payne as the sole panelist in this matter on January 13, 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.

4. Factual Background

Rubbermaid is an American manufacturer and distributor of household items. It is a subsidiary of NASDAQ listed Newell Brands offers various home solutions, including food storage containers, refuse containers, sheds, step stools, closets and shelving, laundry baskets, bins, air fresheners and other household items. Founded in the United States 1920 as the Wooster Rubber Company, the Complainant officially adopted the name "Rubbermaid" in 1933 and in 1999 was purchased by Newell Brands. Newell is a United States based company and worldwide manufacturer, marketer and distributor of consumer and commercial products with a large portfolio of well-known and famous brands with 29,000 employees in over 200 countries around the world and reported net sales of USD 10.6 billion in 2021 alone.

The Complainant also maintains a strong Internet and retail presence through its primary website at <rubbermaid.com> which was registered in March 1994, as well as its various social media platforms including Instagram, Facebook and Twitter. Its Facebook page has more than 181K followers around the globe, whilst its Instagram page has more than 37.7K followers, as well as its Twitter page with more than 29.8K followers.

The Complainant owns combined Australian logo and word mark registration 218837 registered on April 30, 1968, for its RUBBERMAID mark and also United States word mark registration 0637038 for RUBBERMAID registered on November 13, 1956.

The disputed domain name appears to have been created on October 7, 2019. At the time of filing it resolved to a page containing a blog with 3 articles concerning the business of magnesium, a particular manufacturer's white light scanning technology and an article concerning employees' use of passwords in Australia. After the filing of the Complaint, the disputed domain name resolves to a webpage advertising it as being for sale together with a contact email address for offers.

5. Parties' Contentions

A. Complainant

The Complainant notes that it owns registered trade mark rights for its RUBBERMAID mark as noted above and that the disputed domain name wholly incorporates this mark resulting in a domain name that is identical to the Complainant's RUBBERMAID trade mark.

The Complainant submits that the Respondent is not commonly known by the disputed domain name which it says evinces a lack of rights or legitimate interests. Furthermore, the Complainant submits that it has not licensed, authorised, or permitted the Respondent to register domain names incorporating the Complainant's trade marks. It notes that the Whois information identifies the registrant of the disputed domain name as "Andrew Rdics", which it says does not resemble the disputed domain name in any manner. Accordingly, it submits that there is no evidence that the Respondent is commonly known by the disputed domain name and therefore that the Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain name.

The Complainant notes that past panels have determined that use of a disputed domain name to redirect Internet users to content unrelated to a complainant, even if the respondent does not derive commercial benefit from such use, does not automatically render the use of the disputed domain name legitimate (see *Victoria Beckham v. David James*, WIPO Case No. [D2017-0035](#)). The Complainant says that it is the characteristics of the disputed domain name itself, particularly when identical to the Complainant's mark

which raises a heightened risk of impermissible impersonation, which creates the likelihood of confusion. Further, says the Complainant, the Respondent took control of the disputed domain name on, or around, October 9, 2019, which is significantly after the registration of Complainant's RUBBERMAID trade marks and its domain name. It says that by the time the Respondent assumed control of the disputed domain name, the Complainant already had a worldwide reputation in its trade mark which it notes is wholly incorporated into the disputed domain name. Therefore, it is evident that the disputed domain name carries a high risk of implied affiliation with the Complainant which cannot be considered a fair or legitimate use of the disputed domain name.

The Complainant says that its RUBBERMAID trade marks are well-known, with numerous trade mark registrations across numerous countries, including Australia. The Complainant notes that it has marketed and sold its goods and services using this trade mark since 1932, which is well before the Respondent assumed control of the disputed domain name in 2019. By registering a domain name solely comprised of the Complainant's famous RUBBERMAID trade mark, the Complainant says that the Respondent has created a domain name that is identical to the Complainant's trade mark, as well as its domain name. As such, the Respondent has demonstrated a knowledge of and familiarity with the Complainant's brand and business. Further, the composition of the disputed domain name makes it illogical to believe that the Respondent registered it without specifically targeting the Complainant. The Complainant says that it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's brands at the time that the disputed domain name was registered. Stated differently, says the Complainant, the RUBBERMAID mark is so closely linked and associated with the Complainant that the Respondent's use of this mark, or any minor variation of it, strongly implies bad faith.

The Complainant suggests that at the time of registration of the disputed domain name, the Respondent knew, or at least should have known, of the existence of the Complainant's trade marks and that registration of a domain name containing well-known trade marks constitutes bad faith *per se*. In addition to noting the numerous trade marks filed in connection with the Complainant's business prior to the Respondent's registration of the disputed domain name, the Complainant says that it has been in existence since 1920, operating as "Rubbermaid" since 1933 and has been part of Newell Brands since 1999. Further, performing a <google.com.au> search for the term "rubbermaid" returns multiple links referencing the Complainant and its business.

According to the Complainant, it is clear that the Respondent selected the disputed domain name to intentionally confuse unsuspecting internet users into visiting its website. As such, it submits that it must be held that the Respondent has intentionally misappropriated the Complainant's trade mark as a way of redirecting internet users searching for the Complainant to the Respondent's own website. The Complainant suggests that this sort of tactic, labelled "bait-and-switch" for its propensity to confuse internet users into believing that they are visiting a Complainant's site only to discover that the disputed domain is completely unconnected to that Complainant, has been held to be evidence of bad faith registration and use by past panels (see *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)).

The Complainant asserts that the Respondent's use of the disputed domain name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under the auDRP Policy because the disputed domain name is identical to the Complainant's RUBBERMAID trade mark and the website at the disputed domain name features content wholly unrelated to the Complainant and to its products and services.

In addition to the disputed domain name, the Complainant notes that the Respondent currently holds registrations for several other domain names that misappropriate the trade marks of well-known brands and businesses. The Complainant notes that these include: <allurelife.com.au>, <fraserislanddiscovery.com.au>, <houseoffraser.com.au>, <rebeccasharemilliner.com.au>, and <spaldingmccutcheon.com.au>. This fact demonstrates that the Respondent is engaging in a pattern of cybersquatting/typosquatting, which is evidence of bad faith registration and use of the disputed domain name.

The Complainant says that the Respondent has ignored the Complainant's attempts to resolve this dispute outside of this administrative proceeding and notes that past panels have held that the failure to respond to a cease-and-desist letter may properly be considered a factor in finding bad faith registration and use of a disputed domain name.

B. Respondent

The Respondent did not file a Response.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns combined Australian logo and word mark registration 218837 registered on April 30, 1968 for its RUBBERMAID mark and also United States word mark registration 0637038 for RUBBERMAID registered on November 13, 1956. The Panel finds that the dominant element of the Australian combined word and logo mark is the RUBBERMAID word mark.

The disputed domain name wholly incorporates the RUBBERMAID mark with no addition before the ".com.au" country-code Top-Level domain name root. As a result, the Panel finds that the disputed domain name is identical to the Complainant's registered RUBBERMAID trade mark and that the Complaint succeeds under this element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that the Respondent is not commonly known by the disputed domain name and that it has not licensed, authorised, or permitted the Respondent to register domain names incorporating the Complainant's trade marks. It has noted that the registrant of the disputed domain name is "Andrew Rdics", which names, it says, do not resemble the disputed domain name in any manner and as a result the Complainant has submitted that the Respondent is not commonly known by the disputed domain name and cannot be regarded as having acquired rights to or legitimate interests in it.

The Complainant has submitted that its RUBBERMAID mark is very well reputed in connection with its products and has enjoyed a very significant reputation for many years prior to the registration of the disputed domain name. The disputed domain name has been used to divert Internet users to a blog that contains both commercial and factual information, all of which appears to be unrelated to the Complainant. Past panels have determined that the use of a disputed domain name containing a well reputed mark to re-direct Internet users to content unrelated to a complainant, even if the respondent does not derive commercial benefit from such use, does not automatically render the use of the disputed domain name legitimate. In these circumstances, in the absence of a reasonable explanation for choosing the disputed domain name, the subsequent use of the disputed domain name comprising the Complainant's trade mark to divert to a web page in which it is advertised for sale also falls outside the circumstances described as being capable of founding rights or legitimate interests. (see for example *Victoria Beckham v. David James*, WIPO Case No. [D2017-0035](#)).

The Panel finds that there is no evidence in the record that the Respondent is using the disputed domain name for *bona fide* commercial purposes and as discussed under Part C below appears in part to use it to promote the products of at least one commercial entity in a form similar to an "advertorial".

In these circumstances the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in any of the disputed domain names. The Respondent has failed to respond to or to rebut the Complainant's case and for these reasons and as set out under Part C below, the Panel finds that the Complaint also succeeds under this element of the Policy.

C. Registered or Subsequently Used in Bad Faith

The disputed domain name appears to have been created in October 2019 many years after the Complainant's registration of its Australian or United States trade marks. The Complainant's RUBBERMAID mark is very distinctive and based on the evidence enjoys a strong degree of repute in Australia. A simple Internet search would have revealed its presence and therefore, noting the composition of the disputed domain name, it seems more likely than not that the Respondent knew of the Complainant's RUBBERMAID mark at the time that it acquired the disputed domain name.

In registering and using the Complainant's well reputed and distinctive mark in the disputed domain name such as amounts to an identical use of the mark and without any apparent or plausible explanation implies bad faith by the Respondent.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

The Respondent's use of the disputed domain name incorporating the Complainant's well reputed and distinctive RUBBERMAID mark to attract and confuse Internet users and to divert them to a blog that includes in part what appears to be a type of "advertorial" content for a particular Australian business that produces white light scanning product is most likely for the commercial benefit of the Respondent and fulfills the requirements of paragraph 4(b)(iv) of the Policy which amounts to evidence of registration and use of the disputed domain name in bad faith.

The Respondent has failed to explain its conduct in registering the disputed domain name and has also failed to reply to the Complainant's pre-action attempt to resolve the matter. The Panel notes that currently the disputed domain name resolves to a site which is being advertised for sale and which invites offers for its acquisition through what appears to be a personal email address. This together with the fact that the Respondent appears to have registered numerous domain names that incorporate well reputed trade marks (as set out in Part A above) suggests that the Respondent's real intention from these activities is to profit from the sale of the disputed domain name containing the Complainant's well reputed mark at a price in excess of its out of pocket costs. These circumstances only reinforce the Panel's view of the Respondent's bad faith in relation to the disputed domain name.

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith (even though the Policy only requires one or the other) and therefore that the Complaint also succeeds under this element of the Policy.

7. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <rubbermaid.com.au> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: January 24, 2023