

ADMINISTRATIVE PANEL DECISION

Darden Concepts, Inc. v. LELAND ARCHER

Case No. D2023-0617

1. The Parties

The Complainant is Darden Concepts, Inc., United States of America (“United States or US”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is LELAND ARCHER, United States.

2. The Domain Name and Registrar

The disputed domain name <dardeninc.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2023. On February 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 11, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing additional contact details. The Center sent an email communication to the Complainant on February 13, 2023, 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 amendment to the Complaint on the same date.

The Center verified that the Complaint together with the amendment to the 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 February 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 17, 2023.

The Center appointed Angela Fox as the sole panelist in this matter on March 28, 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

The Complainant is based in the US and is a wholly owned subsidiary of Darden Corporation, which is responsible for restaurant administration and business management and is a wholly owned significant subsidiary of Darden Restaurants, Inc., a holding company.

Darden Restaurants, Inc. is a publicly traded company on the New York Stock Exchange, which owns and operates more than 1,850 restaurants, including the successful chain restaurants Seasons 52, Olive Garden, LongHorn Steakhouse, Cheddar's Scratch Kitchen, Yard House, The Capital Grille, Bahama Breeze, and Eddie V's. It is a large and successful commercial operation. In 2022 alone, its sales as of 16 December of that year were on the order of USD 4,932.6 million, and it is one of the 50 largest private employers in the US, employing some 180,000 people. Darden Restaurants, Inc. is the registrant of a number of domain names, including <darden.com>, which was registered on March 11, 1997, and which the Complainant uses in connection with its company website for its restaurant brands.

The Complainant, either directly or via its parent company, Darden Corporation, owns at least 14 trademark registrations in the United States, Malaysia and Peru that consist of or contain DARDEN for restaurant services. Annexed to the Complaint were details of the following US registrations:

US Registration No. 3,766,853 for DARDEN registered on March 30, 2010;
US registration No. 2,217,020 for DARDEN RESTAURANTS registered on January 12, 1999;
US registration No. 2,240,043 for DARDEN RESTAURANTS registered on April 20, 1999;
US registration No. 3,766,865 for DARDEN Logo registered on March 30, 2010.

The disputed domain name was registered on October 27, 2022. According to the Complainant, the Respondent is using the disputed domain name in connection with a "business email compromise" phishing scam impersonating the Complainant or its related companies in an apparent attempt to engage in fraudulent business transactions. Annexed to the Complaint was a copy of one such email, sent from an address using the disputed domain name, "[...][@dardeninc.com](mailto:[...]@dardeninc.com)", which falsely identified the sender as the Complainant's "Senior Procurement Officer", requesting to "open a corporate account with your company... with 30 days of invoice billing setup processing". The email included the Complainant's DARDEN Logo, which further made it appear as though it emanated from the Complainant or one of its related companies, when in fact it did not.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's registered trademarks consisting of or incorporating DARDEN. It argues that the relevant comparison is between the Complainant's marks and the second-level portion of the disputed domain name ("dardeninc"), as it is well-established that the Top-Level Domain ("TLD") ".com" may be disregarded for this purpose (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11). The disputed domain name contains the trademark DARDEN in its entirety plus "inc", which is a common abbreviation of the term "incorporated", which denotes a corporate status. As such, the Complainant argues that it does not prevent a finding of confusing similarity with the Complainant's trademarks.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use its trademarks. To the best of the Complainant's knowledge, the Respondent has never been commonly known by the disputed domain name and has never acquired any trademark or service mark rights in it. Moreover, by using the disputed domain name in connection with a phishing scam impersonating the Complainant, the Respondent clearly has not used the disputed domain name "in connection with a *bona fide* offering of goods or services" or in connection with any other legitimate noncommercial or fair use. The Complainant states moreover that the facts of this proceeding (the Respondent's unauthorized registration and use of a domain name containing the DARDEN trademark in connection with a phishing scam) are virtually identical to those in at least two previous cases filed and won by the Complainant (*Darden Concepts, Inc. v. Virginia Mcewing*, WIPO Case No. [D2021-4385](#); and *Darden Concepts, Inc. v. Privacy Service Provided by Withheld for Privacy ehf / John Kenny*, WIPO Case No. [D2021-4384](#)) and invites the Panel to find that the Respondent in this case has no rights or legitimate interests in the disputed domain name on the basis of the same reasoning as in the previous decisions.

Finally, the Complainant argues that the Respondent registered and has used the disputed domain name in bad faith. By using the disputed domain name as part of a phishing scam impersonating the Complainant, the Respondent has acted in bad faith pursuant to paragraph 4(b)(iii) of the Policy by "register[ing] the domain name primarily for the purpose of disrupting the business of a competitor" and paragraph 4(b)(iv) of the Policy by "intentionally attempt[ing] to attract, for commercial gain, Internet users... by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] product or service...". The Complainant refers to [WIPO Overview 3.0](#), section 3.1.4 ("the use of a domain name for per se illegitimate activity such as... phishing... is manifestly considered evidence of bad faith"); and [WIPO Overview 3.0](#), section 3.4 ("use of a domain name for purposes other than to host a website may constitute bad faith", such as "sending email [or] phishing", especially where "the respondent's use of the domain name [is] to send deceptive emails" for purposes such as "to solicit payment of fraudulent invoices by the complainant's actual or prospective customers").

The Complainant submits that the DARDEN trademarks are moreover so obviously connected with the Complainant given the Complainant's significant market presence and brand recognition and its status as one of the 50 largest private employers in the US that it is likely that the Respondent knew of the Complainant's mark and was seeking to obtain a commercial benefit by registering and using a domain name which was inherently likely to attract Internet users based on confusion with the Complainant's mark.

The Complainant refers again to the decisions in *Darden Concepts, Inc. v. Virginia Mcewing*, WIPO Case No. [D2021-4385](#); and *Darden Concepts, Inc. v. Privacy Service Provided by Withheld for Privacy ehf / John Kenny*, WIPO Case No. [D2021-4384](#) and invites the Panel to find bad faith on the basis of the same reasoning as in those cases.

B. Respondent

The Respondent did not reply to the Complainant's contentions and is in default. No exceptional circumstances explaining the default have been put forward. Therefore, in accordance with paragraphs 14(a) and (b) of the Rules, the Panel will decide the Complaint and shall draw such inferences as it considers appropriate from the Respondent's default.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

With regard to the Complainant and its corporate structure, the Panel takes note of the fact that, as set out in section 1.4 of [WIPO Overview 3.0](#), “A trademark owner’s affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint”. Accordingly, the Panel accepts this Complaint in the name of Darden Concepts, Inc.

A. Identical or Confusingly Similar

The Complainant has proved that it owns registered trademark rights in DARDEN and trademarks including DARDEN.

As the Complainant notes, the relevant comparison is between the Complainant’s marks and the second-level portion of the disputed domain name (“dardeninc”). The TLD “.com” may be disregarded for this purpose ([WIPO Overview 3.0](#), section 1.11). The disputed domain name contains the Complainant’s trademark DARDEN in its entirety plus “inc”, which is the common abbreviation of the term “incorporated”. The element “inc” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark DARDEN.

The Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has never assigned, granted, licensed, sold, transferred to or otherwise authorized the Respondent to register or use its trademarks, nor is there any evidence that the Respondent has ever been commonly known by the disputed domain name or has acquired any trademark rights in it.

Notably, the Complainant has provided evidence that the Respondent has used the disputed domain name in connection with an email phishing scam which was calculated to impersonate the Complainant and to defraud members of the public. In carrying out these deliberate acts of deception, it is clear that the Respondent has used the domain name in connection with illegitimate ends. As in the cases referred to by the Complainant (*Darden Concepts, Inc. v. Virginia Mcewing*, WIPO Case No. [D2021-4385](#); and *Darden Concepts, Inc. v. Privacy Service Provided by Withheld for Privacy ehf / John Kenny*, WIPO Case No. [D2021-4384](#)), such activities point to an absence of any rights or legitimate interests on the part of the Respondent (see [WIPO Overview 3.0](#), section 2.13.1).

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Under paragraph 4(b)(iv) in particular, the Panel may find both registration and use in bad faith where there is evidence that by using the domain name, a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with a 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 it.

In this case, the Complainant has shown evidence that the Respondent has used the disputed domain name in connection with a phishing scheme involving the sending of emails impersonating the Complainant with the intention to defraud members of the public. Such activities amount to intentional use of the domain name to attract, for commercial (and indeed illegitimate) gain, Internet users to an online location of the Respondent. The Respondent has not responded to the Complaint and has made no effort to rebut these very serious allegations against it.

The Panel also notes [WIPO Overview 3.0](#), section 3.1.4, which states that “the use of a domain name for per se illegitimate activity such as... phishing... is manifestly considered evidence of bad faith”; and [WIPO Overview 3.0](#), section 3.4, which states that “use of a domain name for purposes other than to host a website may constitute bad faith”, such as “sending email [or] phishing”, especially where “the respondent’s use of the domain name [is] to send deceptive emails” for purposes such as “to solicit payment of fraudulent invoices by the complainant’s actual or prospective customers”.

The Panel finds that the disputed domain name was registered and has been used 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, <dardeninc.com>, be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: April 11, 2023