

ADMINISTRATIVE PANEL DECISION

OLI Outdoor Services, Inc. v. lance howard, Kayla Howard, Madcow Outdoor Service

Case No. D2023-0736

1. The Parties

The Complainant is OLI Outdoor Services, Inc., United States of America (“United States”), represented internally.

The Respondents are lance howard, United States, and Kayla Howard, Madcow Outdoor Service, United States.

2. The Domain Names and Registrar

The disputed domain names <olioutdoorservice.com> and <olitreeservice.com> (the “Disputed Domain Names”) are registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 16, 2023. On February 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On February 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondents (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 21, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On February 21, 2023, the Center received an email from the Respondent lance howard, stating that he never received a copy of the Complaint. The Complainant filed an amended Complaint on March 10, 2023.

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 Respondents of the Complaint, and the proceedings commenced on March 14, 2023. In accordance with the Rules, paragraph

5, the due date for Response was April 3, 2023. The Respondents did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on April 4, 2023.

The Center appointed Lynda M. Braun as the sole panelist in this matter on April 12, 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 a company that provides tree and lawn care services of various kinds, including, but not limited to, tree pruning, land clearing, stump grinding, tree removal, and landscaping. The Complainant owns the domain names <olioutdoorservices.com> and <olitreecare.com>. The Complainant's <olioutdoorservices.com> domain name resolves to the Complainant's official website at "www.olioutdoorservices.com". The Complainant's <olitreecare.com> domain name currently resolves to the Complainant's official website at "www.olioutdoorservices.com".

The Complainant claims that it has used the trademark OLI OUTDOOR SERVICES under common law since 2020 and also has a pending trademark application with the United States Patent and Trademark Office (USPTO), filed on November 23, 2021, United States Serial No. 97139653, International Class 44 (hereinafter referred to as the "OLI OUTDOOR SERVICES Mark"). The Complainant also claims it has another trademark OLI TREE CARE, which is unregistered.

The Disputed Domain Names <olioutdoorservice.com> and <olitreesevice.com> were registered on October 18, 2022 and April 17, 2021, respectively. The <olioutdoorservice.com> Disputed Domain Name resolves to an error landing page. The <olitreesevice.com> Disputed Domain Name redirects to "www.madcowtreeservice.com", a website that offers the same variety of tree services as does the Complainant.¹

5. Parties' Contentions

A. Complainant

The following are the Complainant's contentions:

- The consolidation of the Respondents is appropriate in this proceeding since the Complaint relates to several Disputed Domain Names and corresponding websites that are subject to common control.
- The Disputed Domain Names are confusingly similar to the Complainant's OLI OUTDOOR SERVICES and OLI TREE CARE Marks.
- The Respondents have no rights or legitimate interests in respect of the Disputed Domain Names.
- The Disputed Domain Names were registered and are being used in bad faith.
- The Complainant seeks the transfer of the Disputed Domain Names from the Respondents to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondents

Before commencement of the administrative proceeding, the Center received an email on February 21, 2023 from the Respondent lance howard, stating that he never received a copy of the Complaint. The Respondents did not reply to the Complainant's contentions.

¹ This Disputed Domain Name <olitreesevice.com> was apparently redirected permanently to the "www.madcowtreeservice" website on March 14, 2023.

6. Discussion and Findings

6.1 Preliminary Issue: Consolidation of the Respondents

The Complainant has requested the consolidation of the Respondents in this proceeding. Pursuant to paragraph 3(c) of the Rules, “[t]he complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.” Where a complaint is filed against multiple respondents, UDRP panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.11.2. Procedural efficiency would also underpin panel consideration of such a consolidation scenario. See *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

According to the Complainant, the Respondents are related to the Madcow Outdoor Service entity and use the same physical address for the registration. Lance Howard is listed as the representative agent for Madcow Outdoor Service in the State of Illinois using the same address, and Kayla Howard provided the organization name of this business entity as well as the company phone number as listed in public phone directories and on the main company website. Thus, the Panel agrees that the Disputed Domain Names are under common control, and that consolidation of the Respondents is appropriate in this proceeding.

6.2 Substantive Issues

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 Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondents have no rights or legitimate interests in respect of the Disputed Domain Names; and
- (iii) the Disputed Domain Names were registered and are being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name <olioutdoorservice.com> is confusingly similar to the OLI OUTDOOR SERVICES Mark.

The Complainant has established rights in the OLI OUTDOOR SERVICES Mark based on its pending trademark application and common law trademarks for the OLI OUTDOOR SERVICES Mark in the United States. The consensus view is that the trademark registration or unregistered mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See [WIPO Overview 3.0](#), sections 1.2 and 1.3.

In the Panel’s view, paragraph 4(a)(i) of the Policy refers to a “trademark or service mark” in which the complainant has rights and does not expressly limit the application of the Policy to a registered trademark or service mark. Therefore, the fact that in this case the Complainant did not have at the time of the registration of the Disputed Domain Names an active registered trademark or service mark for the OLI OUTDOOR SERVICES Mark or OLI TREE SERVICES Mark does not preclude a finding that it has established trademark or service mark rights in those names. See *Imperial College v. Christophe Dessimoz*, WIPO Case No. [D2004-0322](#). See also [WIPO Overview 3.0](#), section 1.1.1.

Further, the Panel concludes that as here, common law trademark and service mark rights exist when a party demonstrates that there is sufficient goodwill and reputation in a name – and therefore acquired distinctiveness – to establish sufficient association of the name with the party itself. *Id.* According to the Internet Archive, the Complainant started to provide service on the website “www.olioutdoorservices.com” under the OLI OUTDOOR SERVICES Mark since at least 2020. The Panel considers that the Complainant has rights in the OLI OUTDOOR SERVICES Mark as a source identifier – indeed given the redirection of one of the Disputed Domain Names to competing services, there seems to be little doubt that the Respondent sees this as the case.

The Disputed Domain Name <olioutdoorservice.com> consists of the OLI OUTDOOR SERVICES Mark except that it omits the letter “s” in the word “services”, and then is followed by the generic Top-Level Domain (“gTLD”) “.com”. The difference of one letter, the letter “s” in the Disputed Domain Name does not prevent a finding of confusing similarity to the OLI OUTDOOR SERVICES 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”). The Disputed Domain Name <olitreesservice.com> incorporates the dominant features of the Complainant’s OLI OUTDOOR SERVICES Mark, and then is followed by the gTLD “.com”. Thus, the Disputed Domain Name <olitreesservice.com> is confusingly similar to the Complainant’s OLI OUTDOOR SERVICES Mark. See [WIPO Overview 3.0](#), section 1.7 (“While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”).

Further, the addition of a gTLD such as “.com” in a domain name is a technical requirement. 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 1.11.1. Thus, the Panel concludes that the Disputed Domain Names are confusingly similar to the Complainant’s OLI OUTDOOR SERVICES 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 the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent bears the burden of production to demonstrate 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 Respondents have rights or legitimate interests in the Disputed Domain Names. The Complainant has not authorized, licensed, or otherwise permitted the Respondents to use the Complainant’s OLI OUTDOOR SERVICES Mark. The Complainant does not have any business relationship with the Respondents, nor are the Respondents making a legitimate noncommercial or fair use of the Disputed Domain Names. There is also no evidence that the Respondents are commonly known by the Disputed Domain Names or by any name similar to them, nor have they used or made demonstrable preparations to use the Disputed Domain Names in connection with a *bona fide* offering of goods or services.

Moreover, the Panel finds that the nature of the Disputed Domain Names carries a risk of implied affiliation and cannot constitute fair use here, as they effectively suggest sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

In this case, the Panel finds that the Complainant has made out a *prima facie* case that the Respondents have no rights or legitimate interests in the Disputed Domain Names. The Respondents have not submitted

any substantive arguments or evidence to rebut the Complainant's *prima facie* case. As such, the Panel concludes that the Respondents do not have rights or legitimate interests in the Disputed Domain Names.

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 Respondents' 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 Respondents registered and are using the Disputed Domain Names in bad faith in an attempt to attract Internet users to the Respondents' website by creating a likelihood of confusion with the Complainant's OLI OUTDOOR SERVICES Mark as to the source, sponsorship, affiliation or endorsement of the Disputed Domain Names. The Respondents' registration and use of the Disputed Domain Names indicate that such registration and use has been done for the specific purpose of trading on and targeting the name and reputation of the Complainant. 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"). Non use of the companion <olioutdoorservice.com> Disputed Domain Name does not prevent a finding of bad faith.

Moreover, the redirection of the <olitreeservice.com> Disputed Domain Name to the Respondents' website at "www.madcowtreeservice.com", a website that provides the same tree services as the Complainant, clearly demonstrates 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 Names <olioutdoorservice.com> and <olitreeservice.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: April 24, 2023