

ADMINISTRATIVE PANEL DECISION

World Equity Brand Builders, LLC, and Southern Glazer's Wine and Spirits, LLC v. Rick Wall

Case No. D2023-4226

1. The Parties

The Complainants are World Equity Brand Builders, LLC, United States of America ("United States"), and Southern Glazer's Wine and Spirits, LLC, United States, represented by Jackson Walker, LLP, United States.

The Respondent is Rick Wall, United States.

2. The Domain Name and Registrar

The disputed domain name <webbbanks.net> (the "Disputed Domain Name") is registered with Wild West Domains, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 10, 2023. On October 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 12, 2023, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 16, 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 October 21, 2023.

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 October 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 15, 2023.

The Center appointed Lynda M. Braun as the sole panelist in this matter on November 21, 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 World Equity Brand Builders, LLC is the parent company of Complainant Southern Glazer's Wine and Spirits, LLC (collectively referred to as the "Complainant"). Founded in 2008 with its main office in Miami, Florida, United States, the Complainant is a distributor and wholesaler of premium wine and spirits in the United States, the Caribbean and South America.

The Complainant owns the domain name <webbbanks.com>, registered on December 16, 2016, which resolves to its primary consumer-facing website "www.webbbanks.com", on which the Complainant prominently uses its common law WEBB BANKS mark in stylized form and features general information regarding its products and services. The Complainant also uses the common law WEBB BANKS mark (stylized) on company documents such as invoices and signature blocks in emails.

The Disputed Domain Name was registered on May 22, 2023, and resolves to a pay-per-click ("PPC") advertising page with links to sponsored third-party websites related to financial services.

The Respondent also used the Disputed Domain Name to perpetuate a phishing scheme in which the Respondent configured the Disputed Domain Name for email functions and used the email address "[...].@webbbanks.net" to impersonate the Complainant and send fraudulent emails from the Complainant's accountant or other staff to the Complainant's customers, stating that payments were overdue and requesting wire transfer payments.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that

- the Disputed Domain Name is confusingly similar to the Complainant's common law trademark;
- 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

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has established common law trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The term "trademark or service mark" as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (or common law) marks under the UDRP. [WIPO Overview 3.0](#), section 1.1.1.

The Complainant has used WEBB BANKS in commerce since 2017 to offer the Complainant's services as a premium wine and spirits distributor as well as Complainant's branding, marketing, and brokerage services relating to wine, beer, spirits, and other beverages. The WEBB BANKS mark has been used consistently and continuously to identify the Complainant to its customers and the public since its first use in 2017. As such, the Complainant has shown evidence of common law trademark rights given that the Complainant's customers associate the WEBB BANKS mark with the Complainant and the services it provides due to the Complainant's extensive promotion and enforcement of its trademark as a source identifier since 2017 (hereinafter referred to as the "WEBB BANKS Mark").

Therefore, the Complainant has standing to commence this administrative proceeding. Moreover, the Complainant has established common law trademark rights for purposes of the UDRP, since, as stated above, the WEBB BANKS Mark has become a distinctive identifier which consumers associate as a premium wine and spirits distributor, the Complainant has extensively promoted and enforced its trademark as a source identifier since its first use in 2017, and the Complainant has used the WEBB BANKS Mark consistently and continuously to identify the Complainant to its customers and the public since 2017.

The Panel finds the entirety of the common law mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the mark is recognizable within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical to the common law mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Finally, the addition of a generic Top-Level Domain ("gTLD") such as ".net" in a domain name is technically required. Thus, it is well established that, as here, 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.

Based on the available record, the Panel finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

For instance, the Respondent has not submitted any arguments or evidence to rebut the Complainant’s *prima facie* case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its common law WEBB BANKS Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. See Policy, paragraph 4(c).

In considering the use made of the Disputed Domain Name to resolve to a landing page with PPC hyperlinks, the Panel finds that the Respondent was not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name. Moreover, based on the Respondent’s use of the Disputed Domain Name to pass off as the Complainant and perpetuate a phishing scheme targeting the Complainant’s unsuspecting customers using emails incorporating the Disputed Domain Name does not confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”). Specifically, the Disputed Domain Name had been used to impersonate one or more of the Complainant’s employees to send phishing emails, stating that one of the Complainant’s bank accounts had changed and requesting that the payments be made to the “new” account. In this regard, the use of a disputed domain name for illegal or fraudulent activity such as phishing or passing off/impersonation, can never confer rights or legitimate interests on a respondent.

Thus, the Panel concludes that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. Rather, the Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead by defrauding the Complainant’s customers. Such use cannot conceivably constitute a *bona fide* offering of a product/service within the meaning of paragraph 4(c)(i) of the Policy.

Based on the available record, the Panel finds that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

There are 4 illustrative examples of bad faith enumerated in the Policy: (i) registration to sell the domain name to the complainant at a profit; (ii) pattern of bad faith conduct; (iii) disrupting the business of a competitor; or (iv) intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant's mark. These examples are non-exhaustive and other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: . . . phishing, impersonation/passing off, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

For example, in the present case, the Panel notes that the Respondent is using the Disputed Domain Name to impersonate the Complainant and perpetrate a phishing scheme directed at the Complainant's unknowing customers, which is clear evidence of bad faith. The Respondent's phishing scheme to send fraudulent emails to the Complainant's customers evidences a clear intent to disrupt the Complainant's business, deceive individuals, and trade off the Complainant's goodwill by creating an unauthorized association between the Respondent and the Complainant's WEBB BANKS Mark. See *Banco Bradesco S.A. v. Fernando Camacho Bohm*, WIPO Case No. [D2010-1552](#). The fraudulent emails also contained the Complainant's stylized mark in their signature blocks and letterhead.

Previous UDRP panels have found that email-based phishing schemes that use a complainant's trademark in the domain name are evidence of bad faith. See [WIPO Overview 3.0](#), section 3.4 ("Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. [...] Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers."). See, e.g., *BHP Billiton Innovation Pty Ltd v. Domains By Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#) ("[T]he use of an email address associated with the disputed domain name, to send a phishing email for the purposes of dishonest activity is in itself evidence that the disputed domain name was registered and is being used in bad faith.").

Based on the circumstances here, the Respondent registered and used the Disputed Domain Name in bad faith in an attempt to create a likelihood of confusion with the Complainant's WEBB BANKS Mark.

Finally, 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 WEBB BANKS Mark as to the source, sponsorship, affiliation or endorsement of the Disputed Domain Name. The Respondent's registration and use of the Disputed Domain Name 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"). When coupled with the fact that the Respondent is using the Disputed Domain Name to redirect users to a PPC advertising page with competing third-party websites, it is clear the Respondent intended to profit from and/or harm the Complainant's trademark and

reputation when registering the Disputed Domain Name with the sole purpose of capitalizing on the user traffic intended for the Complainant's website. Such conduct is emblematic of the Respondent's bad faith.

Based on the available record, the Panel finds that the third element of the Policy has been established.

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 <webbbanks.net> be transferred to the Complainant World Equity Brand Builders, LLC.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: December 5, 2023