

ADMINISTRATIVE PANEL DECISION

Consumer Reports, Inc. v. Artur Solovev
Case No. D2022-0558

1. The Parties

The Complainant is Consumer Reports, Inc., United States of America (“United States” or “U.S”), represented by Cozen O'Connor, United States.

The Respondent is Artur Solovev, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <theconsumersreports.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 16, 2022. On February 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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.

The Center verified that 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 March 7, 2022. In accordance with the Rules, paragraph 5, the original due date for Response was March 27, 2022. At the request of the Respondent, in accordance with the Rules, paragraph 5(b), the due date was automatically extended by four calendar days to April 1, 2022. The Respondent sent an email communication on April 8, 2022, in which he foreshadowed the filing of the Response and sought to explain the delay. The Response was received by email on April 11, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on April 22, 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 non-profit consumer product testing and advocacy organization that produces publications under the title “Consumer Reports”. It changed its name from “Consumers Union of United States, Inc.” to its present name in November 2016. The Complainant owns numerous trademark registrations including the following:

- United States trademark registration number 672,849 for CONSUMER REPORTS, registered on January 20, 1959, specifying “periodic publication” in class 16, with a claim of first use in commerce on June 1, 1942; and
- United States trademark registration number 5,064,394 for CONSUMER REPORTS, registered on October 18, 2016, specifying certain mobile applications and podcasts and services in classes 9, 35, and 41, with claims of first use in commerce on February 23, 2011, September 2, 2015 and July 2011, respectively;

The above trademark registrations remain current. The Complainant has also registered the domain name <consumerreports.org> that it uses in connection with a website in English. The homepage displays in the top left corner a green CR logo alongside the Complainant’s CONSUMER REPORTS mark. The website offers a search engine facility and publishes a large number of product ratings and reviews by different people posted on different dates. Reviews include the product prices offered by retailers alongside “Shop” buttons that link to the relevant retailers’ respective websites. On the “About Us” tab, the website lists its online retailer partners, including Amazon, Walmart, and others, and advises that the Complainant may earn an affiliate commission when users shop through retailers’ links on its site and that 100% of the fees that it collects are used to support its non-profit mission. The site invites Internet users to “become a member” with a green button.¹

The Respondent is an individual resident in the Russian Federation. According to the Response, he was resident in Ukraine at the time when he registered the disputed domain name.

The disputed domain name was registered on February 16, 2019. It resolves to a website in English. The homepage displays in the top left corner a yellow star on a blue logo alongside the title “The Consumers’ Reports”. The website offers a search engine facility and displays approximately 34 product reviews, all of them posted by the same person and dated either June 5, June 7 or June 9, 2021. Every product review is displayed alongside a “Check Price on Amazon” button. On the “About Us” tab, the website makes an “Amazon Affiliates Disclosure” which reads “As an Amazon Affiliate I earn from qualifying purchases”. The site invites Internet users to “subscribe” with a green button.

After the Complaint was filed, the Respondent’s website began to display prominently the following notice: “Welcome to TheConsumersReports. Please note that we are not affiliated, associated, authorized, endorsed by, or in any way officially connected with the Consumer Reports, Inc., or any of its subsidiaries or its affiliates or its websites. Consumer Reports website can be found at “<https://www.consumerreports.org>”.

The Registrar confirmed that the language of the Registration Agreement is English.

¹ The Panel notes its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules and has searched the Parties’ publicly available websites in order to verify their respective claims regarding the alleged similarities and differences between them. The Panel considers this process of verification useful in assessing the merits of the case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's CONSUMER REPORTS mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. While there is content on the Respondent's website consisting of what purport to be product reviews and ratings, the offering cannot be considered *bona fide* because such use constitutes infringing use. The Respondent purports to offer reviews of consumer products, which is the Complainant's business. A comparison of the Parties' websites reveals that the Respondent's website is essentially a copycat version of the Complainant's, except that the Respondent is directing sales to Amazon for a profit. The Complainant has not given its permission to the Respondent to use its registered trademarks or any domain name confusingly similar to its registered trademarks. The Respondent has not been commonly known by the disputed domain name and has no relation to the Complainant. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Respondent's website uses the identical trademarks owned and registered by the Complainant as well as the same color scheme, font and typeface. There can be no reasonable dispute that a substantial number of users of the Respondent's site are likely to be confused about the source, sponsorship, affiliation or endorsement of the site. The Respondent intended to trade on the Complainant's mark in order to receive Amazon affiliate commissions.

B. Respondent

The disputed domain name is registered in the ".com" generic Top-Level Domain ("gTLD") whereas the Complainant's domain name is registered in the ".org" gTLD. It is visually impossible to confuse the Parties' respective domain names. The additional word "the" in the disputed domain name and the plural "s" exclude an obvious confusing similarity with the Complainant's trademark. An Internet user who searches for the Complainant's website necessarily knows the name of that website. It is impossible to make the mistake of writing the disputed domain name instead of the Complainant's domain name in the address bar.

The disputed domain name is neither identical nor confusingly similar to the CONSUMER REPORTS trademark as that trademark is a descriptive term and cannot serve to distinguish the goods or services of one person from those of another. The term "consumer report" is defined in 15 U.S. Code § 1681a and in Consumer Financial Protection Bureau ("CFPB") consumer laws and regulations. Thus, the term cannot be monopolized by the Complainant and must remain available for use with the provision of consumer report information. Furthermore, there is no likelihood of confusion between "consumer reports" and "the consumers reports", especially in the context of descriptive uses relating to the provision of consumer reports information. The addition of "the" and the use of the plural clearly distinguishes the disputed domain name from the Complainant's mark visually, aurally and conceptually. The singular implies the review of one person while the plural means the review of several consumers. This is the principle on which the sample of products in the review of a particular category of goods is built.

The disputed domain name is not a reference to the Complainant but a non-infringing alternative. The Respondent resides in the Russian Federation and, prior to that in Ukraine, when he was looking for a domain name suitable for the publication of consumer reports. The Respondent checked the availability of domain names based on lexical and phonetic considerations, *i.e.*, the descriptive meaning of the term "consumers reports". Finding no suitable options, the Respondent purchased the disputed domain name at auction. At the time of purchase and prior to the date of the Complaint, the Respondent knew nothing about the Complainant, its existence, its website or its trademark and could not have deliberately attempted to impersonate the Complainant. During the time between the purchase of the disputed domain name and the receipt of the Complaint, the Respondent spent USD 845 on website development and USD 518 on promotion and received income of USD 193.14. The profit is aimed at the development of the site and the mission to provide reviews of products on the basis of verified reviews of customers of the trading platforms.

The Respondent makes a profit when a reader clicks on a link from the Respondent's site to Amazon's site and purchases goods there. This type of profit generation is customary and *bona fide*. The reader is notified that the website owner receives compensation. The Complainant's website, in addition to charging consumers for access to its services, employs the same plan of profit making. There is not a single instance of misleading consumers or defaming the Complainant's trademark. The Respondent has never asserted an interest in selling the disputed domain name. Because of the descriptive nature of the disputed domain name, Internet users expect to find consumer reports and product reviews, not information about or specifically from the Complainant. The design of the Respondent's website in no way suggests any connection to the Complainant. The Complainant implies that the Respondent's website contains materials imitating reviews and ratings, when it does not. It offers nothing more than product reviews and ratings. This is not a situation where the website was hastily created to fabricate rights or where the website is a computer-generated template with ridiculous content.

The disputed domain name is made up of ordinary English words. For example, "air travel consumer reports" on the U.S. Department of Transportation ("DOT") website and "consumer reports" on the U.S. Federal Trade Commission website. The words "consumer" and "reports" in English can and are used according to their common meaning and their use cannot be unequivocally associated with the Complainant's trademark or website. The top Google search results for "air travel consumer reports" display pages of website, and the Complainant's website is ranked third. The Complainant has not provided convincing evidence that its website is such common knowledge that the phrase "consumers reports" in a search query should be construed as intending to search specifically for the Complainant's website and not consumer reports in the general sense.

The Respondent's website does not imitate the Complainant's website. Visually and technically, the sites are completely different in their structure, navigation, design, fonts, and color schemes, and the only thing that they have in common is that they direct sales to Amazon for profit. The Complainant, like the Respondent, identifies itself as an "Amazon partner", which means that it gets a share of every sale that it directs to Amazon from its site. The Respondent's website offers ratings of popular product categories based on actual customer feedback from websites such as Amazon, eBay, etc. Functionality is in the final stages of development that will build product ratings based on reviews left by visitors to the Respondent's website. There are plans to expand the number of consumer reports.

The use of the disputed domain name constitutes a *bona fide* offering of goods or services, with no intent to mislead consumers or harm the reputation of the Complainant's trademark or service mark. There is no evidence to suggest that such use is not in good faith. There is no evidence that the Respondent copied material from the Complainant's website or sought to defame the Complainant's trademark. The Respondent does not seek to divert Internet users searching for the Complainant to its own website. The Respondent has not previously been respondent in any other proceeding and is not a domain name aggregator.

There was never any indication that the Respondent's website was owned by, or in any other way affiliated with, the Complainant's company. Upon receipt of the Complaint, the Respondent placed a block at the top of all pages on the website warning that it was in no way affiliated with the Complainant or his company, and also placed an active hyperlink to the Complainant's website within that block. The block is prominently located and "floats" in order to be as prominent as possible and make it obvious to every visitor that the Respondent's website is not affiliated with the Complainant or its website.

6. Discussion and Findings

6.1. Late Filing of the Response

The Respondent filed its Response ten days late despite having received an extension of the due date. He explained that the delay was due to his hospitalization.

The Panel has a discretion to admit a late Response as part of its general powers under paragraph 10 of the Rules (a) to conduct the administrative proceeding in such a manner as it considers appropriate in accordance with the Policy and Rules; (b) to ensure that each Party is given a fair opportunity to present its case; and (c) to ensure that the administrative proceeding takes place with due expedition.

In the present case, the Panel considers that the Response will enable it to make its decision based on the best information available and that the admission of the late Response will not prejudice either Party or substantially delay the proceedings. In these circumstances, the Panel will exercise its discretion to accept the late Response.

6.2. Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (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

Based on the evidence presented, the Panel finds that the Complainant has rights in the CONSUMER REPORTS mark.

The disputed domain name wholly incorporates the Complainant's CONSUMER REPORTS mark, adding the definitive article "the" as its initial element and inserting a plural "s" after "consumer". Given that the mark remains clearly recognizable within the disputed domain name, these minor grammatical differences do not prevent a finding of confusing similarity between the disputed domain name and the mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The disputed domain name also includes the gTLD extension ".com". As a standard requirement of domain name registration, it is widely acknowledged that this element may be disregarded in the comparison between a domain name and a mark for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.11.

The Respondent points out that the Complainant's own domain name incorporates a different gTLD extension (".org"). However, this is not germane to the comparison under the first element of paragraph 4(a) of the Policy, which is made with the Complainant's trademark rather than its domain name and, in any case, a different gTLD extension would not prevent a finding of confusing similarity.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or

- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant submits that it has not given its permission to the Respondent to use any domain name that is confusingly similar to its registered trademarks, such as the disputed domain name. The Respondent replies that it needs no such permission.

As regards the first circumstance set out above, the Respondent is using the disputed domain name in connection with a website that publishes product reviews. The Complainant alleges that the Respondent's website is a copycat version of its own website. The Panel has compared the websites side-by-side and observes that, while some of their fonts are similar, they use different colors, logos, and layout blocks, so that it would be factually inaccurate to state that the Respondent's website mimics the Complainant's website. Nevertheless, the Respondent's website displays "The Consumers' Reports" as its title on the homepage, which is textually almost identical to the Complainant's CONSUMER REPORTS trademark, while it offers the same specific type of content as the Complainant's website. Although there are no instances of actual confusion in the record, the Panel considers that these similarities are likely to mislead or confuse Internet users as to the source, endorsement or affiliation of the Respondent's website. These circumstances indicate that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services.

The Panel has taken note that the operational element of the disputed domain name is composed of three dictionary words, which form a phrase (omitting only a possessive apostrophe for technical reasons). This fact does not automatically confer rights or legitimate interests in respect of the disputed domain name. See [WIPO Overview 3.0](#), section 2.10. While the phrase "the consumers' reports" may be relevant to the content of the Respondent's website, the Respondent is not using it to describe his goods or services. The phrase appears in the title on the Respondent's homepage and on the "About Us" tab to identify the Respondent's business undertaking. The website content is described on the homepage menu as "product reviews", not consumer reports and, likewise, the content of each post is described in its heading as "reviews" of the relevant product class. While post headings also include the words "consumer reports", their inclusion often appears contrived, such as "Reviews of 10 Best Single Serve Coffee Maker Consumer Reports", in which the last two words appear to be surplusage. In light of the statements in the Response and on the About Us tab, such a post heading is evidently intended to mean that the Respondent's product reviews are based on reviews by customers. In any case, all the product reviews on the Respondent's website were posted by a single person on a range of topics within a period of five days and do not appear to refer to customer reviews nor any consumers' reports. The Respondent refers to various U.S. regulatory definitions and usages of "consumer report" but the Panel notes that he is not using the disputed domain name in connection with any of those meanings. Specifically, the CFPB definition refers to reports about consumers' creditworthiness, and the FTC website refers to reports of fraud or bad business practices filed by consumers. Further, the DOT definition is for "air travel consumer reports", a term that the Respondent does not use at all.

In view of all these circumstances, the Panel finds it less likely that the disputed domain name is being genuinely used in connection with the dictionary meanings of the words that it contains and more likely that it is being used to trade off the Complainant's trademark rights. Accordingly, the Panel finds that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services for the purposes of the Policy.

As regards the second circumstance set out above, the Respondent's name is listed in the Registrar's Whois database as Artur Solovev, not the disputed domain name. The reviews on the Respondent's website are all posted by one "Bennett Brown", which may or may not be an alias of the Respondent. In any case, there is no evidence that the Respondent has been commonly known by the disputed domain name.

As regards the third circumstance set out above, the Respondent is offering product reviews as an Amazon

Affiliate and earns from qualifying purchases. While the Panel does not question the legitimacy of this business model, this circumstance does mean that the Respondent is not making a noncommercial or fair use of the disputed domain name within the meaning of the second element of paragraph 4(a) of the Policy.

There are no other circumstances reflected in the record that would indicate that the Respondent has rights or legitimate interests in respect of the disputed domain name.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

“(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, by creating a likelihood of confusion with the 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 [the respondent’s] web site or location.”

As regards registration, the disputed domain name was registered in 2019, many years after the registration of the Complainant’s CONSUMER REPORTS trademark. The Complainant has made longstanding use of its trademark in connection with product reviews in English, a language in which the Respondent is evidently fluent, and online, including at its website. The disputed domain name wholly incorporates the Complainant’s mark with the addition of the definitive article “the” as its initial element and the insertion of the plural “s” after “consumer”, which do little to distinguish it from that mark. The disputed domain name resolves to a website offering the same specific type of content as the Complainant’s website. The Panel does not consider this circumstance attributable to the dictionary meanings of the words that the disputed domain name contains, for the reasons given in Section 6.2B above. Accordingly, the Panel finds it more likely than not that the Respondent had the Complainant’s mark in mind at the time at which he registered the disputed domain name.

The Respondent is using the disputed domain name in connection with a website that offers product reviews. This use is for commercial gain as every product review on the site is displayed alongside a “Check Price on Amazon” button and the Respondent earns from qualifying purchases on Amazon. That circumstance, in itself, does not indicate bad faith; indeed, as the Respondent points out, the Complainant may also earn retailer affiliate commissions, including from Amazon. However, for the reasons given in Section 6.2B above, the Panel considers that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the product reviews displayed on the Respondent’s website, and that such use is intentional, within the terms of paragraph 4(b)(iv) of the Policy.

The Respondent submits that an Internet user who searches for the Complainant’s website necessarily knows the name of that website and that it is impossible to make the mistake of writing the disputed domain name instead of the Complainant’s domain name in the address bar. However, the Panel notes that many Internet users may know the Complainant’s trademark without knowing its website address, and the scope of the Policy is not limited to cases of typosquatting, where domain names incorporate an obvious misspelling of a mark.

The Panel takes note that, after receiving notice of this dispute, the Respondent added a floating disclaimer panel in a prominent position on his website, denying any affiliation with the Complainant and indicating the Complainant’s website address. However, the Panel notes that the disclaimer was not present on the

website at the time when the Complaint was filed. Further, the disclaimer is inadequate as, by the time that Internet users read it, the disputed domain name has achieved its purpose of diverting them to the Respondent's website. Accordingly, the addition of this disclaimer does not alter the Panel's conclusion.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

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 <theconsumersreports.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: May 6, 2022