

## **ADMINISTRATIVE PANEL DECISION**

**Alimentation Couche-Tard inc. v. Privacy Service Provided by Withheld for Privacy ehf / Stella Davidson**  
Case No. D2022-0672

### **1. The Parties**

The Complainant is Alimentation Couche-Tard inc., Canada, represented by St. Lawrence Law Firm LLP, Canada.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Stella Davidson, Nigeria.

### **2. The Domain Name and Registrar**

The disputed domain names <couchetardoil.com> and <couchetardoil.online> (the “Disputed Domain Names”) are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 25, 2022. On February 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On February 28, 2022, 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 Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 7, 2022, 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 amended Complaint on March 11, 2022.

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 Respondent of the Complaint, and the proceedings commenced on March 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 11, 2022.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on April 20, 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 Canadian headquartered company listed on the Toronto Stock Exchange. The Complainant operates several thousand convenience stores worldwide under various brands, including “Couche-Tard”, which has been used extensively since 1980 in connection with the Complainant’s goods and services.

The Complainant owns a number trademark registrations worldwide for the COUCHE-TARD mark including, *inter alia*, Canadian Trademark Reg. No. TMA323,571 for COUCHE-TARD registered on February 13, 1987; European Union Trademark No. 018024626 for COUCHE-TARD registered on September 10, 2019; and United Kingdom Trademark No. UK00918024626 for COUCHE-TARD registered on September 10, 2019 (“the Complainant’s Trademark”). The Complainant also owns and operates the website to which the domain name <couche-tard.com> resolves.

The <couchetardoil.com> Disputed Domain Name was registered on August 6, 2021 and currently resolves to an inaccessible webpage. The <couchetardoil.online> Disputed Domain Name was registered on November 27, 2021 and resolves to a website purporting to be run by the Complainant in its “About Us” section.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant’s primary contentions can be summarized as follows:

(a) The Disputed Domain Names are identical or confusingly similar to the Complainant’s Trademark. The Complainant’s Trademark is reproduced in its entirety in the Disputed Domain Names. The only elements which differentiate the Disputed Domain Names and the Complainant’s Trademark are the non-use of the “dash” between “couche” and “tard”, and the addition of the word “oil”.

(b) The Respondent does not have any rights or legitimate interests in the Disputed Domain Names. There is no evidence suggesting that the Respondent has been commonly known by the Disputed Domain Names. The Complainant has never authorized or given permission to the Respondent, who is not associated with the Complainant in any way, to use the Complainant’s Trademark or to register the Disputed Domain Names. There is also no evidence of the Respondent’s use of, or demonstrable preparations to use, the Disputed Domain Names or a name corresponding to the Disputed Domain Names in connection with a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the Complainant’s Trademark.

(c) Both the Respondent’s registration of and its use of the Disputed Domain Names establish the Respondent’s bad faith. The Respondent’s registration of domain names which completely incorporates the Complainant’s Trademark is in itself an act of bad faith by someone with no legal connection to the Complainant’s business. Further, the website to which the <couchetardoil.online> Disputed Domain Name resolves states that it is operated by “Alimentation Couche-Tard” and lists actual employees of the Complainant. The pictures used are also of the Complainant’s stores. The Respondent has also used the Disputed Domain Names to send emails impersonating the Complainant and its employees. In so doing, the Respondent’s actions amounted to bad faith.

## B. Respondent

The Respondent did not reply to the Complainant's contentions.

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the Disputed Domain Names are 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 respect of the Disputed Domain Names; and
- (iii) the Disputed Domain Names have been registered and are being used by the Respondent in bad faith.

### A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations such as, *inter alia*, the trademarks listed above in Section 4.

It is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the Top-Level-Domain ("TLD") extension, ".com" and ".online" in this case, may be disregarded. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Disputed Domain Names incorporate the word component of the Complainant's Trademark in its entirety with the addition of the term "oil". UDRP panels have consistently found that the addition of other terms to a mark (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not alter the fact that the domain name at issue is confusingly similar to the mark in question. See section 1.8 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the mere addition of the suffix "oil" does not prevent a finding of confusing similarity between the Disputed Domain Names and the Complainant's Trademark.

As such, the Panel finds that the Disputed Domain Names are confusingly similar to the Complainant's Trademark for the purposes of the Policy, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark, and there is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Names.

The Respondent did not submit a formal Response. The fact that the Respondent did not submit a formal Response does not automatically result in a decision in favour of the Complainant. However, the Panel may accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see

*Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Names by demonstrating any of the following:

- (i) before any notice to her of the dispute, the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name(s) or a name corresponding to the Disputed Domain Name(s) was in connection with a *bona fide* offering of goods or services;
- (ii) the Respondent has been commonly known by the Disputed Domain Name(s), even if she has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name(s), without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Names or names corresponding to the Disputed Domain Names were in connection with a *bona fide* offering of goods or services. The Panel agrees with the Complainant that the Respondent's use of the Disputed Domain Names cannot be regarded as legitimate noncommercial or fair use as the Respondent appears to have registered the Disputed Domain Names solely for the purpose of misleading third parties by fraudulently appropriating the Complainant's Trademark and impersonating the Complainant.

In addition, no evidence has been provided to show that the Respondent has trademark rights corresponding to the Disputed Domain Names, or that the Respondent has become known by the Disputed Domain Names.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Names and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity can already by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel finds that the Complainant's Trademark appears to be fairly well-known. In addition, a quick Internet search conducted by the Panel shows that the top search results returned for the key word "couchetard" are the Complainant's websites and third party websites providing information relating to the Complainant's convenience store business. Therefore, taking this into consideration together with the fact that the Disputed Domain Names incorporate the Complainant's Trademark in its entirety with the addition of the term "oil", the Disputed Domain Names were used to impersonate the Complainant in various email correspondences to job seekers, images and employees of the Complainant were used on the website to which <couchetardoil.online> resolves, the Respondent must have been aware of the Complainant and the rights in the Complainant's Trademark when registering the Disputed Domain Names.

In addition, the Panel finds that the following factors further support a finding that the Disputed Domain Names were registered and are being used by the Respondent in bad faith:

- (i) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of any actual or contemplated good faith use by it of the Disputed Domain Names; and

(ii) It is difficult to conceive of any plausible use of the Disputed Domain Names that would amount to good faith use, given that the Disputed Domain Names contain the Complainant's Trademark in its entirety (with the addition of a term "oil"). The Respondent also used the Disputed Domain Names to impersonate the Complainant in correspondence with job seekers by using legitimate sounding email addresses like "[...][@couchetardoil.com](mailto:[...]@couchetardoil.com)" and "[...][@couchetardoil.online](mailto:[...]@couchetardoil.online)". The Respondent has not demonstrated any attempt to make legitimate use of the Disputed Domain Names and the website(s) to which it resolves, which evidences a lack of rights or legitimate interests in the Disputed Domain Names, as confirmed by past panels (see *Washington Mutual, Inc., v. Ashley Khong*, WIPO Case No. [D2005-0740](#)).

(iii) The Respondent registered the Disputed Domain Names using a privacy shield to conceal its identity (see *Primonial v. Domain Administrator, PrivacyGuardian.org / Parla Turkmenoglu*, WIPO Case No. [D2019-0193](#)).

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Names in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

## 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 <couchetardoil.com> and <couchetardoil.online> be transferred to the Complainant.

*/Gabriela Kennedy/*

**Gabriela Kennedy**

Sole Panelist

Date: May 4, 2022