

ADMINISTRATIVE PANEL DECISION

CPS Technology Holdings LLC v. Contact Privacy Inc. Customer
0126767727 / Veronica Guerra, dcolors.com
Case No. D2022-2017

1. The Parties

The Complainant is CPS Technology Holdings LLC, United States of America, represented by Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, United States of America.

The Respondent is Contact Privacy Inc. Customer 0126767727, Canada / Veronica Guerra, dcolors.com, Mexico.

2. The Domain Name and Registrar

The disputed domain name <bateriaslth.com> (the “Domain Name”) is registered with Tucows, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 3, 2022. On June 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 3, 2022, the Registrar transmitted by email to the Center its verification response registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 9, 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 June 10, 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 June 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 4, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on July 15, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a manufacturer of automotive batteries. The Complainant and its predecessors have used, advertised, and promoted battery products and related goods and services worldwide, including batteries under the brand LTH for decades. The Complainant holds trademark registrations for LTH in several jurisdictions, such as in Mexico where the Respondent appears to be located, for example Mexican trademark registration number 211515 registered on February 27, 1978, and Mexican trademark registration number 1763965 registered on June 16, 2017.

The Domain Name appears to be registered on July 31, 2008. At the time of filing of the Complaint, and the time of drafting the Decision, the Domain Name resolved to a webpage in Spanish that claims to offer battery servicing.

5. Parties' Contentions

A. Complainant

The Complainant argues that the LTH trademark has become famous and provides evidence of trademark registrations. The Complainant further argues that the Domain Name is confusingly similar to the Complainant's trademark, as the Domain Name consists of the Complainant's trademark with the addition of the Spanish term "baterias" ("batteries" in English). This is a generic term for the products offered by the Complainant.

The Complainant asserts that the Respondent is not authorized to use the Complainant's trademark. The Respondent has not made any use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, the Respondent has used the Domain Name for a website with no legitimate contact information. On the top left corner of the website, there is an image of a GONHER battery, the products of a competitor of the Complainant in Mexico.

The Complainant argues that the Respondent has intentionally attempted to attract for commercial or other gain, users to its 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. In addition to actual knowledge of the Complainant's rights, the Respondent has constructive notice of the LTH trademark rights. The Respondent is using the Domain Name to direct consumers to a website that is competitive to the Complainant. This is evidence of bad faith. Moreover, it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the Domain Name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademark LTH. The test for confusing similarity involves a comparison between the trademark and the Domain Name. The Domain Name incorporates the Complainant's trademark, with the prefix "baterias". The addition does not prevent a finding of confusing similarity between the Domain Name and the trademark.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domains (“gTLDs”), see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

As stated in [WIPO Overview 3.0](#), section 2.1, “while 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

The Complainant has made un rebutted assertions that it has not granted any authorization to the Respondent to register a domain name containing the Complainant’s trademark or otherwise make use of the Complainant’s mark. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered trademark rights. The Respondent has not made use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering. The Respondent’s website includes no legitimate contact information. On the top left corner of the website there is an image of a battery offered by a competitor of the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Based on the use of the Domain Name, the Panel finds it likely that the Respondent must have been aware of the Complainant and its trademark when the Respondent registered the Domain Name. Moreover, the composition of the Domain Name suggests that the Respondent was aware of the Complainant when registering the Domain Name.

The Respondent appears to have used the Domain Name to attempt to attract for commercial or other gain, users to its website or other online location, by creating a likelihood of confusion with the Complainant’s trademark. The Respondent is using the Domain Name to direct consumers to a website that is competitive to the Complainant. Moreover, based on the evidence of the case, the Panel agrees that it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the Domain Name.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 Domain Name <bateriaslth.com> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: July 27, 2022