

ADMINISTRATIVE PANEL DECISION

Alimentation Couche-Tard inc. v. Privacy service provided by Withheld for Privacy ehf / kingsley ugwu
Case No. D2022-2040

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 / kingsley ugwu, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <couchetard-oil.com> (“Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2022. On June 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 7, 2022, 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 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 6, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on July 19, 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 retail enterprise, established in 1980 and based out of Montreal, Canada that operates over 15,000 convenience stores globally under a variety of brands including the brand Couche-Tard.

The Complainant holds a trade mark registration in Canada for a mark consisting of the plain words “couche-tard” (the “COUCHE-TARD Mark”) for services in class 35, with a registration date of February 13, 1987 (Registration No. TMA323571). The Complainant also holds registrations for the COUCHE-TARD Mark in the United Kingdom and European Union.

The Domain Name was registered on November 27, 2021. The uncontradicted evidence in the Complaint is that the Respondent operates a scheme to acquire personal information including sensitive bank information from members of the public. The Respondent does this by impersonating the Complainant and inviting those members to apply (and thereby providing the Respondent with the applicant’s personal information and other details) for non-existent jobs with the Complainant. The Domain Name has been used by the Respondent as an email address from which the Respondent sends emails purporting to be official emails from the Complainant. The website to which the Domain Name resolves (“Respondent’s Website”) further supports the Respondent’s fraudulent scheme by mimicking the Complainant’s official website through unauthorised use of the Complainant’s COUCHE-TARD Mark and various copyrighted material.

5. Parties’ Contentions

A. Complainant

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant’s COUCHE-TARD Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the COUCHE-TARD Mark, having registered the COUCHE-TARD Mark in various jurisdictions. The Domain Name consists of the COUCHE-TARD Mark along with the addition of the word “-oil” which in no way serves to avoid confusion.

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the COUCHE-TARD Mark. The Respondent does not use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Rather, the Domain Name is used for emails and a website impersonating the Complainant as part of a broader illegal scheme to acquire confidential information from mislead job applicants, which does not provide the Respondent with rights or legitimate interests in the Domain Name.

The Domain Name was registered and is being used in bad faith. The Domain Name is being used for a website and emails that impersonate the Complainant as part of a broader scheme to exploit potential job applicants by encouraging them to apply for non-existent employment opportunities and thereby provide the Respondent with their personal information. This amounts to an attempt to perpetuate fraud.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the COUCHE-TARD Mark, having registrations for the COUCHE-TARD Mark as a trade mark in various jurisdictions, including Canada, the United Kingdom and the European Union.

The Domain Name consists of the COUCHE-TARD Mark (minus the hyphen) along with the additional word "-oil". Other UDRP panels have repeatedly held that where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity under the first element; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the Domain Name is confusingly similar to the Complainant's COUCHE-TARD Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or
- (iii) you are making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the COUCHE-TARD Mark or a mark similar to the COUCHE-TARD Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name. There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial use. Rather, it appears from the evidence submitted by the Complainant that the Respondent has used the Domain Name for a website and to send emails passing itself off as the Complainant to prospective job applicants, as part of a broader scheme to encourage those applicants to apply for non-existent employment opportunities with the Complainant and thereby providing the Respondent with the prospective applicant's personal information and other details. Such conduct is fraudulent and is not a *bona fide* offering of goods or services.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had an opportunity to rebut the *prima facie* case that it lacks rights or legitimate interests but has chosen not to do so. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith (Policy, paragraph 4(b)):

- (i) circumstances indicating that the Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name to the Complainant who is the owners of the trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Respondent has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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 website or location.

The Panel finds that the Respondent was aware of the Complainant at the time the Domain Name was registered. The Domain Name has been used for a website impersonating the Complainant and to create an email account from which the Respondent sent emails purporting to be emails from the Complainant. The Respondent does not provide, nor is it apparent to the Panel, any reason why the Domain Name was registered other than by reference to the Complainant. The registration of the Domain Name in awareness of the Complainant and its rights in the COUCHE-TARD Mark and in the absence of rights or legitimate interests amounts to registration in bad faith.

The Respondent is using the Domain Name to send emails seeking to mislead recipients as to the identity of the sender for its own commercial gain. Such conduct is deceptive, illegal, and in previous UDRP decisions has been found to be evidence of registration and use in bad faith, see *The Coca-Cola Company v. Marcus Steiner*, WIPO Case No. [D2012-1804](#). The Panel finds that the Respondent is using the Domain Name in bad faith.

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith under 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, <couchetard-oil.com> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: July 29, 2022