

ADMINISTRATIVE PANEL DECISION

Dewberry Engineers Inc. v. sdgsdfgd sdgsdfgd
Case No. D2022-2167

1. The Parties

The Complainant is Dewberry Engineers Inc., United States of America (“United States”), represented by McCandlish Lillard, P.C., United States.

The Respondent is sdgsdfgd sdgsdfgd, United States.

2. The Domain Name and Registrar

The disputed domain name <dewberryvine.org> (the “Domain Name”) is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2022. On June 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 16, 2022, the Registrar transmitted by email to the Center its verification response, disclosing 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 16, 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 20, 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 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 19, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on July 25, 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 corporation organized under the laws of the State of New York and currently headquartered in Fairfax, Virginia, United States. As described on its website at “www.dewberry.com”, which it registered in 1998, the Complainant was established in 1956 and named for founder Sidney Dewberry. It offers engineering, architecture, real estate, and emergency management services through more than 50 locations across the United States, with more than 2,000 employees.

The Complainant holds United States trademark Registration Number 2991043 for DEWBERRY as a word mark (registered September 6, 2005) and Registration Number 2991044 (also registered September 6, 2005) for a DEWBERRY composite word and design mark featuring the “Dewberry” name alongside an illustration of a cluster of berries.

The Registrar reports that the Domain Name was registered on May 12, 2022, giving the apparently random string “sdgsdfgd” as the name of the registrant and the organization, and “10001” as the ostensible postal address in the United States. A contact email address was given in the “wix-domains” domain, which explains itself as a “site to contact the owner of a domain name protected by the WHOIS Privacy Service”.

It does not appear that the Respondent has published an active website using the Domain Name. Instead, the Domain Name resolves to a landing page hosted by Wix.com. The landing page states that “This Domain Has Flown Away”, offers to reconnect the domain “if this domain belongs to you”, and advertises the website creation services of Wix.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that the Domain Name is confusingly similar to its registered DEWBERRY marks and that the Respondent has no permission to use the marks or other evident rights or legitimate interests. The Complainant infers a malicious intent ultimately to use the Domain Name for illicit purposes, misdirect Internet users, or sell the Domain Name to the Complainant:

“Dewberryvine.org is identical to Dewberry.com with a minor addition, and was registered by people who neither appear to do business with Dewberry nor have Dewberry as part of their name. As such, the only conclusion is that the Disputed Domain Name was registered for one or more improper purposes, such as attempting to collect fraudulent payments from Complainant’s customers, enabling creation of deceptive email addresses and impersonating Complainant’s personnel, diverting traffic from Complainant’s website, or seeking to sell the Disputed Domain Name to Complainant.”

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the domain name is 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 domain name; and (iii) the domain name has been registered and is being used in

bad faith. Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

The first element of a UDRP complaint “functions primarily as a standing requirement” and entails “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. The Domain Name incorporates the Complainant’s registered DEWBERRY mark in its entirety and adds the term “vine”, which does not avoid a finding of confusing similarity. See *id.*, section 1.8. (As usual, the Top-Level Domain “.org” is disregarded as a standard registration requirement. See *id.* section 1.11.2.)

The Panel finds, therefore, that the Domain Name is confusingly similar to the Complainant’s DEWBERRY mark for purposes of the first Policy element and concludes that the Complainant has established the first element of the Complaint.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s 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) that the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has established trademark rights, a lack of permissive use, and the lack of evidence that the Respondent has a corresponding name or makes use of the Domain Name in connection with a legitimate business or noncommercial fair use. Thus, the Complainant has made a *prima facie* case, and the burden of production shifts to the Respondent.

It is possible to conceive of legitimate interests in the Domain Name. The dewberry is a species of berry as well as an English and American family name. Indeed, this is reflected in the Complainant’s name and its registered design mark. Screenshots available through the Internet Archive’s Wayback Machine show that for several years before the Respondent registered the Domain Name in 2022, the Domain Name resolved to a website “under construction” for “the Dewberry Family in Georgia”, headed with an illustration of dewberries and the explanation that the site was intended to be developed as “a tributary vine of the Dewberry Family in Atlanta headed by the late Robert and Ethel Dewberry”. It seems that the site was never developed, and the Respondent purchased the Domain Name after the former registration expired. While a gardener or a Dewberry family member might well have a legitimate interest in the Domain name, this Respondent has demonstrated no legitimate uses or demonstrable preparations for legitimate uses of the Domain Name. The Panel finds that the Respondent has not met its burden of production on this issue and concludes that the Complainant prevails on the second element of the Complaint.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that “shall be evidence of the registration and use of a domain name in bad faith”, including the following (in which “you” refers to the registrant of the domain name):

“(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location.”

It does not appear that the unknown Respondent in this case has mounted a website of its own, but it has allowed the Domain Name to be used to advertise the services of Wix.com. This takes unfair advantage of the likelihood of confusion with the Complainant’s mark, which is associated with a long-established, nationally known professional services firm. Possibly the Respondent would deny awareness of the Complainant’s mark, but the Respondent has not come forward to do so. In fact, the Respondent has taken pains to continue to hide its identity, furnishing registration details that are patently false, in violation of the Registration Agreement, paragraph 4:

“You agree to: (1) provide certain true, current, complete and accurate information about you as required by the application process; and (2) maintain and update according to our modification procedures the information you provided to us when purchasing our services as needed to keep it current, complete and accurate.”

Further, the Respondent did not reply to communications through the third-party channels it provided via Wix.com.

The Respondent’s failure to identify itself or respond to this proceeding lend credence to the Complainant’s inference that the Respondent had no legitimate reasons for selecting the Domain Name and may yet use it for phishing attacks, misleading emails or sites, or extortionate demands to purchase the Domain Name.

In any event, the Panel finds bad faith registration and use on this record in the Respondent’s fraudulent registration details, combined with its failure to respond to the Complaint and the continued parking of the Domain Name with a third party advertising its own commercial services. The Panel concludes, therefore, that the Complainant has established the third element of the Complaint.

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, <dewberryvine.org>, be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: August 8, 2022