

ADMINISTRATIVE PANEL DECISION

Allen & Overy LLP v. Ewa Dziedzic
Case No. D2022-4229

1. The Parties

The Complainant is Allen & Overy LLP, United Kingdom, represented internally.

The Respondent is Ewa Dziedzic, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <alleenovery.com> (the “Disputed Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 9, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name, which differed from the named Respondent (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 10, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on November 11, 2022.

The Center verified that the Complaint together with the amendment to 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 November 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 5, 2022.

The Center appointed Nicholas Weston as the sole panelist in this matter on December 13, 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 an international law firm founded in London in 1930 with more than 40 offices and employs roughly 5,650 people. The Complainant holds a number of registrations for the trademark ALLEN & OVERY in various jurisdictions including, for example: United States Trademark Registration No. 2743361 for ALLEN & OVERY, registered on July 29, 2003 in classes 16, 36, and 42 and European Union Trade Mark No. 010411189 for the mark ALLENOVERY registered on March 21, 2012 in classes 35, 36, 41 and 45.

The Complainant owns the domain name <allenandover.com> which hosts its main website.

The Disputed Domain Name was registered on October 11, 2022, and resolves to an inactive webpage displaying an error message.

5. Parties' Contentions

A. Complainant

The Complainant cites its European Union Trademark No. 001500669 registered on May 22, 2001 and other registrations internationally for the marks ALLEN & OVERY and ALLENOVERY as *prima facie* evidence of ownership.

The Complainant submits that its rights in the marks ALLEN & OVERY and ALLENOVERY predate the Respondent's registration of the Disputed Domain Name <alleenover.com>. It submits that the Disputed Domain Name is confusingly similar to its trademarks, because the Disputed Domain Name incorporates in its entirety the ALLENOVERY trademark and that the confusing similarity is not removed by the additional letter "e" or the addition of the generic Top-Level Domain ("gTLD") ".com".

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it is inactive and resolves to an error message so the Respondent is not making a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the Disputed Domain Name. The Complainant also states that there is no business or legal relationship between the Complainant and the Respondent, and that the Respondent is not known by the name "Allen & Overy" or "Allenovery".

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and Rules and submits that the Respondent registered the Disputed Domain Name for the purpose of fraudulent phishing to impersonate someone who works for the Complainant and that such conduct combined with the lack of any other reasonable explanation, the concealment of the Respondent's identity and the passive holding constitutes bad faith use.

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 has the burden of proving the following:

(i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which

the Complainant has rights; and

(ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and

(iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the marks ALLEN & OVERY and ALLENOVERY in numerous jurisdictions. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the ALLEN & OVERY trademark, the Panel observes that the Disputed Domain Name comprises: (a) a misspelling of the Complainant's trademark ALLEN & OVERY without the conjunction "and" and that has an additional letter "e"; (b) followed by the gTLD ".com".

Furthermore, the Disputed Domain name is confusingly similar to the ALLENOVERY trademark but for the additional letter "e".

It is well established that the gTLD used as technical part of a domain name may be disregarded. The relevant comparison to be made is with the Second-Level portion of the Disputed Domain Name, specifically: "alleenoverly" (see [WIPO Overview 3.0](#), section 1.11).

It is also well established that in cases where a dominant feature of the relevant mark of a Complainant is, at least, recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

The Panel finds that the additional letter "e" (and, where applicable, the omission of the conjunction "and") does not avoid a finding of confusing similarity between the Disputed Domain Name and the Complainant's trademark. "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element." (see [WIPO Overview 3.0](#), section 1.9).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see: [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because (i) the Disputed Domain Name is inactive and has been used to phish for a misdirected payment; (ii) the Respondent has not acquired or owned any trademark or service mark rights in the names "allen&overy" or "alleenoverly", and has not been commonly known by the names "allen&overy" or "alleenoverly"; and (iii) the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain to misleadingly divert Internet users or to tarnish the Complainant's trademarks.

The Panel notes the evidence that the Disputed Domain Name in this proceeding is inactive and resolves to a page displaying an error message. Furthermore, the Complainant has provided evidence that the Disputed Domain Name is being used in connection to a fraudulent phishing scheme impersonating a Partner of the Complainant; such use of the Disputed Domain Name does not give rise to any rights or legitimate interests.

The Panel is satisfied that the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. In the absence of a response, this Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Panel finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy requires that the complainant must also demonstrate that the Disputed Domain Name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both of these conjunctive requirements.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith is overwhelming.

On the issue of registration, taking into account the composition of the Disputed Domain Name and the subsequent use of the Disputed Domain Name to enable phishing that sought a payment intended to be directed to the Complainant's law firm to be misdirected, the Panel is satisfied that the Respondent knew of the Complainant's trademark ALLEN & OVERY when it registered the Disputed Domain Name (see *Allen & Overy LLP v. WhoisGuard Protected, WhoisGuard, Inc. / Name Redacted*, WIPO Case No. [D2019-2512](#) ("the Complainant's Trademark has long history and considerable reputation"); *Allen & Overy LLP v. WhoisGuard Protected, WhoisGuard, Inc. / Crystal Scheurecker, Jadestone energy pty*, WIPO Case No. [D2020-0299](#) ("the Complainant's trademarks enjoy considerable renown worldwide in connection with the provision of legal services and legal advice"). On any view, the Respondent cannot credibly claim to have been unaware of the mark (see: [WIPO Overview 3.0](#), section 3.2.2).

In addition, the gap of several years between registration of the Complainant's trademark and the Respondent's registration of the Disputed Domain Name (containing a misspelling of the Complainant's trademark) is a further indicator of bad faith. (See *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)). In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's registration of the Disputed Domain Name by almost 20 years.

On the issue of use, the Complainant's evidence is that the Disputed Domain Name does not resolve to an active website. The evidence also includes evidence of attempted phishing using the Disputed Domain Name to send emails, it submits "with the intent of fraudulently diverting client funds into a bank account under the Respondent's control". In support of this contention is a copy of an email putatively from a Partner of the Complainant from the email address in a potentially fraudulent attempt to impersonate the Complainant to extract a misdirected payment from the recipient of such communications. Past UDRP panels have held that the use of a domain name for per se illegitimate activity such as phishing is considered to be evidence of bad faith and this Panel accepts that the uncontested evidence of phishing in this case supports a finding of bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

In the absence of any evidence to the contrary, this Panel accepts the Complainant's evidence and finds that the Respondent has taken the Complainant's trademarks ALLEN & OVERY and ALLENOVERY and incorporated a deliberate misspelling of it that adds the letter "e" into the Disputed Domain Name, without the Complainant's consent or authorization.

Accordingly, the Panel finds that the Complainant has satisfied the requirements 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 Disputed Domain Name <alleenoverly.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: December 27, 2022