

ADMINISTRATIVE PANEL DECISION

EVEON Containers B.V. v. Tim Joush

Case No. D2022-4704

1. The Parties

The Complainant is EVEON Containers B.V., Netherlands, represented by Chiever B.V., Netherlands.

The Respondent is Tim Joush, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <evoencontainers.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 8, 2022. On December 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 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 December 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 December 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 19, 2023.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on January 25, 2023. 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, EVEON Containers B.V., is a worldwide online retailer of used ship containers since 2019. They offer customers innovative building, shipping, and storage solutions worldwide and have set a new standard in the container retail.

The Complainant owns various trademark registrations for EVEON in several jurisdictions including the following:

- Benelux Trademark Registration No.1420409 EVEON, registered on October 14, 2020, in classes 6, 35, and 39;
- United Kingdom Trademark Registration No. UK00003697445 EVEON, registered on March 11, 2022, in classes 6, 35, and 39;
- International Trademark Registration No. 1594759 EVEON, registered on December 31, 2020, in classes 6, 35, and 39, designating, among others, European Union, and United States;
- United States Trademark Registration No. 6762875 EVEON, registered on June 21, 2022, in classes 6, 35, and 39.

The Complainant promotes its business at “www.eveoncontainers.com”.

The Respondent registered the disputed domain name <evoencontainers.com> on July 13, 2022, which resolves to a webpage offering identical goods and services to those offered by the Complainant.

5. Parties' Contentions

A. Complainant

Since 2019, the Complainant has brought the advantages of the digital world to the container market. An innovative customer-centric, cost effective 100% digital business that only sells decommissioned containers.

The Complainant has become very successful in this very specific market in many countries throughout the world.

The Complainant is the owner of Benelux trademark registration and an International registration of the word mark EVEON designating the European Union, Switzerland, and the United States that predate the registration of the disputed domain name.

The Complainant claims that the disputed domain name is confusingly similar with the trademark EVEON in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Complainant has not licensed the Respondent to use its trademarks and there is no relationship between the Parties that would justify the registration of the disputed domain name by the Respondent.

Nothing suggests that the Respondent is commonly known by the disputed domain name.

The Respondent has no registered trademark corresponding to the disputed domain name.

The Respondent intentionally wishes the public to believe that the website to which the disputed domain resolves is an official or authorized website of the Complainant, while it is not, by flagrantly copying content and photographs of the Complainant's website. The disputed domain name is intended to misleadingly divert Internet users away from the Complainant's true website at "www.eveoncontainers.com" for commercial gain.

Individual pictures of the Complainant's employees are shown on the Respondent's website using false names. The picture of the Complainant's CEO was misused by the Respondent for a different name.

It is evident that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the EVEON marks.

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's EVEON marks.

The disputed domain name <evoencontainers.com> incorporates the Complainant's trademark EVEON merely switching the "eo" for "oe", which does not prevent a finding of confusing similarity, as neither does the inclusion of the descriptive term "containers". See sections 1.8 and 1.9 of the [WIPO Overview 3.0](#).

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark EVEON in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following several circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to or legitimate interests in a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- the respondent (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if the respondent has acquired no trademark or service mark rights; or
- the respondent is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has proved that they are the owners of the EVEON mark. There is no indication that they have licensed or otherwise permitted the Respondent to use any of their trademarks, nor have they permitted the Respondent to apply for or use any domain name incorporating its mark.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein. The name of the Respondent does not resemble the disputed domain name in any manner.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other element to prove that the Respondent has legitimate interests or that it has established rights in the disputed domain name.

The disputed domain name resolves to a webpage offering identical goods and services to those offered by the Complainant, and copies content and photographs from the Complainant's website.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's trade name and trademark EVEON mentioned in section 4 above (Factual Background) when he registered the disputed domain name on July 13, 2022. By that time, the Complainant's trademark had been registered and used successfully in the very specific market in which the Parties compete. Moreover, the disputed domain name is almost identical to the Complainant's domain name <eveoncontainers.com>.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business by incorporating the Complainant's distinctive trademark EVEON swithching the "eo" for "oe", which is tantamount to "typosquatting" and the addition of the descriptive word "containers" which contributes to increase confusion among Internet users who very likely will be lead to believe that the website to which the disputed domain resolves belongs to or is affiliated with the Complainant, particularly since they both offer the identical goods and services.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name, the nature of the disputed domain name, the use of the disputed domain name to resolve to a website including pictures of the CEO and other people of the Complainant are all indications of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Respondent registered and is using the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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, <evoencontainers.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: February 8, 2023