

ADMINISTRATIVE PANEL DECISION

The Lincoln Electric Company v. MIGUEL LOPEZ / PENTECOST SHADOW Case No. D2022-4879

1. The Parties

The Complainant is The Lincoln Electric Company, United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is MIGUEL LOPEZ, Spain / PENTECOST SHADOW, Spain.

2. The Domain Names and Registrar

The disputed domain names <linconielectric.com> and <linconleelectric.com> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 20, 2022. On December 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on December 21, 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 22, 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 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 18, 2023.

The Center appointed Marilena Comanescu 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

Founded in 1895 by John C. Lincoln, with a capital investment of USD 200 to make electric motors he designed, the Complainant has become one of the world leaders in the design, development and manufacture of arc welding products, robotic arc welding systems, plasma and oxy-fuel cutting equipment, and in the brazing and soldering alloys market.

Currently, the Complainant is headquartered in Cleveland, Ohio, has over 11,000 employees worldwide, 60 manufacturing locations, including operations and joint ventures in 19 countries and a worldwide network of distributors and sales offices covering more than 160 countries. In 2018, the Complainant reported sales of USD 3.0 billion.

The Complainant holds worldwide trademark registrations for LINCOLN ELECTRIC, such as the following:

- the United States Registration No. 2420805, filed on July 9, 1999, and registered on January 16, 2001, covering services in the International Class 35; and
- the European Union Trade Mark No. 004725941, filed on November 17, 2005, and registered on November 27, 2006, covering goods and services in the International Classes 6, 9 and 35.

The Complainant holds a portfolio of over 700 domain name registrations which incorporate its trademarks, including LINCOLN ELECTRIC, the primary one being <lincolnelectric.com> registered in 1996.

Both disputed domain names were registered on November 17, 2022.

At the time of filing the Complaint, the disputed domain name <linconielectric.com> was used in connection with pay-per-click ("PPC") pages with sponsored links related to, *inter alia*, metal and steel welding and fabrication; and the disputed domain name <linconielectric.com> resolved to an error page.

On February 15, 2021 and on March 11, 2021, the Complainant sent cease-and-desist letters to the Respondent in relation to the disputed domain names. The letters remain unanswered.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to its distinctive and internationally known trademark LINCOLN ELECTRIC being typosquatted versions of its trademark which have intentionally been designed to closely mimic the Complainant's trademark and domain name, the Respondent has no rights or legitimate interests in the disputed domain names, and the Respondent registered and is using the disputed domain names in bad faith. The Complainant requests the transfer of the disputed domain names to it.

B. Respondent

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

6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain names are 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 the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Preliminary Procedural Issue. Consolidation of Multiple Disputed Domain Names and Respondents

According to the provisions of paragraph 10(e) of the Rules, the Panel has the power to decide the consolidation of multiple domain names disputes. Further, paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In the present case, there are two disputed domain names and with two sets of registrant details.

According to the information provided by the Registrar, the disputed domain name <linconielectric.com> was registered by MIGUEL LOPEZ, and the disputed domain name <linconlelectric.com> was registered by PENTECOST SHADOW.

The present disputed domain names: (i) were registered on the same day, through the same Registrar, using the same name servers; (ii) were created in a similar manner, reproducing the Complainant's trademark with typos – *i.e.* reversed and replaced middle letters; (iii) the address is apparently in Spain but the information provided in the Whois was inaccurate or incomplete for both; and (iv) neither were actively used to display legitimate content on the corresponding websites.

The Respondent had the opportunity to comment on the consolidation request made by the Complainant but it chose to remain silent.

For the above, the Panel finds that the disputed domain names are registered by the same person or are under common control, and would be equitable and procedurally efficient to decide the consolidation of multiple disputed domain names and the Respondents in the present procedure. See also section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

B. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the LINCOLN ELECTRIC trademark.

The disputed domain name <linconielectric.com> incorporates the Complainant's trademark with a typo, the letters "l" and "n" (at the end of the term "lincoln") reversed, and the letter "l" further replaced with an "i"; and the disputed domain name <linconlelectric.com> incorporates the Complainant's trademark with the letters "l" and "n" (at the end of the term "lincoln") reversed. However, such alterations do not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain names.

Numerous UDRP panels have considered that a domain name consisting of a misspelling of the complainant's trademark (*i.e.*, typosquatting) does not prevent a finding of confusing similarity. See section 1.9 of the [WIPO Overview 3.0](#).

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (*e.g.*, ".com", ".info", ".org") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark LINCOLN ELECTRIC, pursuant to the Policy, paragraph 4(a)(i).

C. Rights or Legitimate Interests

The Complainant asserts that it has given no license or other right to use its trademark to the Respondent, that the Respondent is not commonly known by the disputed domain names, and that the Respondent has not used the disputed domain names in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain names. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not replied to the Complainant's contentions to advance a claim to any rights or legitimate interests in the disputed domain names.

There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain names or that the Respondent made a *bona fide* offering of goods or services or a legitimate noncommercial use under the disputed domain names.

In fact, the disputed domain name <linconlelectric.com> is kept inactive and this does not amount to a *bona fide* or legitimate use.

Also, the disputed domain name <linconielectric.com> is used in connection with a parking page displaying PPC links, promoting services of the Complainant's competitors. UDRP panels have constantly found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's marks or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain names, pursuant to the Policy, paragraph 4(a)(ii).

D. Registered and Used in Bad Faith

The Complainant has been operating its business since 1915; promotes its business under the domain name <lincolnelectric.com> since 1996; and its trademark LINCOLN ELECTRIC is distinctive and has acquired reputation in its industry.

The disputed domain names were registered in 2022 and incorporate the Complainant's trademark with obvious alterations and are very similar to the Complainant's corresponding domain name.

From the above, the Panel finds that the Respondent was aware of the Complainant, its business, and trademark at the registration of the disputed domain names.

At the time of filing the Complaint, the disputed domain name <linconielectric.com> resolved to a page providing PPC links promoting various goods and services, including goods similar to those provided by the Complainant.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt “to attract, for commercial gain, Internet users to [the respondent’s] 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 or location or of a product or service on [the respondent’s] website or location” is evidence of registration and use in bad faith.

The Respondent was using without permission the Complainant’s distinctive trademark with an obvious alteration in order to get traffic on its web portal and to misleadingly divert Internet users to third parties websites, and thus to obtain commercial gain from the false impression created with regard to a potential affiliation or connection with the Complainant.

Further, the disputed domain name <linconlelectric.com> was directed to an error page. From the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or “coming soon” or other similar inactive page) would not prevent a finding of bad faith under the doctrine of passive holding. The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be relevant circumstances found to be indicative of bad faith include the degree of distinctiveness or reputation of the complainant’s mark and the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use. See section 3.3 of the [WIPO Overview 3.0](#).

As previously mentioned, the disputed domain name <linconlelectric.com> incorporates the Complainant’s distinctive trademark with an obvious misspelling and is very similar to the Complainant’s domain name, and the Respondent failed to participate in this proceeding.

The Respondents’ physical addresses listed in the WhoIs were inaccurate or incomplete. The majority of the UDRP panels view the provision of false contact information as an indication of bad faith. See section 3.6 of the [WIPO Overview 3.0](#).

The Respondent failed to provide any argument in its favor in response to the Complainant’s cease-and-desist letters and present Complaint. Having in view the other circumstances of this case, such facts constitute further evidence of bad faith.

Furthermore, it was consistently found by previous UDRP panels that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a third party’s famous or widely-known trademark can create, by itself, a presumption of bad faith registration for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain names in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 names <linconielectric.com> and <linconlelectric.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: February 8, 2023