

ADMINISTRATIVE PANEL DECISION

The Chemours Company v. Pham Trung, chemsours
Case No. D2022-4986

1. The Parties

The Complainant is The Chemours Company, United States of America (“United States” or “US”), represented by Bates & Bates LLC, United States.

The Respondent is Pham Trung, chemsours, United States.

2. The Domain Name and Registrar

The disputed domain name <chemsours.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 24, 2022. On December 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name (Contact Privacy Inc. Customer 0165967288) which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 16, 2023, 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 amendment to the Complaint on January 17, 2023.

The Center verified that the Complaint together with the amendment to 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 January 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 10, 2023.

The Center appointed Stefan Naumann as the sole panelist in this matter on February 27, 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 states that it is a US chemical company that operates globally and owns domain names consisting of the CHEMOURS trademark and CHEMOURS trademarks in various countries. The Complainant did not provide evidence of its corporate registration. The Panel was able to confirm evidence of such corporate registration with the publicly accessible database of the State of Delaware using the company name provided by the Complainant.

In support of its statements, the Complainant has submitted a list of domain names and trademarks it claims to own and a Whois of its <chemours.com> domain name.

Standing alone, the trademark list does not establish that the listed trademarks are owned by the Complainant and are in effect. The Panel considers that in principle a complainant's failure to provide evidence of its trademark rights or domain names could require a procedural order.

In the interest of allowing a timely resolution of the matter, and in keeping with the consensus view among UDRP panels that a panel may undertake limited factual research into matters of public record if it deems this necessary to reach the right decision,¹ the Panel verified the ownership and registration of a US and Singaporean trademark listed by the Complainant.

The Complainant owns a US trademark CHEMOURS (no. 5163745) filed on May 1, 2014, and registered on March 21, 2017, for goods and services in Classes 1, 2, 3, 4, 5, 9, 12, 16, 17, 19, 21, 22, 23, 24, 25, 37, 40, 42, and 44 of the Nice Classification for classifying goods and services. Its subsidiary The Chemours Company LLC owns a Singapore trademark CHEMOURS (n° T1407026D) filed on May 7, 2014, for goods and services in the same 19 classes of the Nice Classification. The limited factual research into matters of public record carried out by the Panel establishes that these rights are in effect and owned by the Complainant and its subsidiary.

The disputed domain name <chemsours.com> was registered on December 14, 2022. The Complainant indicates and provides evidence that the disputed domain name directs to a website offering web design services. The disputed domain name is being used as a part of a fraudulent email scheme impersonating the Complainant.

The Respondent, initially a privacy protection service provider, was disclosed as an individual, with an address in the US.

In cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, an appointed panel retains discretion to determine the respondent against which the case should proceed. Depending on the facts and circumstances of a particular case, e.g., where a timely disclosure is made and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), paragraph 4.4.5).

¹ *Sermo, Inc. v. CatalystMD, LLC*, WIPO Case No. [D2008-0647](#); *e-Duction, Inc. v. John Zuccarini, d/b/a The Cupcake Party & Cupcake Movies*, WIPO Case No. [D2000-1369](#); see also *Descente, Ltd. and Arena Distribution, S.A. v. Portsnpitals Enterprises Limited*, WIPO Case No. [D2008-1768](#); *Latchways PLC v. Martin Peoples*, WIPO Case No. [D2010-1255](#); *Sensis Pty Ltd. Telstra Corporation Limited v. Yellow Page Marketing B.V.*, WIPO Case No. [D2011-0057](#).

In the present case, disclosure of the underlying registrant occurred, and the record contains no indication of a relationship between the privacy protection service and the underlying registrant beyond the provision of privacy or proxy registration services.

The Panel finds it appropriate that the case should proceed against the underlying registrant as Respondent.

5. Parties' Contentions

A. Complainant

The Complainant asserts that its CHEMOURS trademarks are well known, that the Respondent has no permission from the Complainant to use the Complainant's trademarks or apply for a domain name with the Complainant's trademarks, that the Respondent is not commonly known by and does not have a right or legitimate interest with respect to the disputed domain name in connection with a *bona fide* offer of goods and services, and that the Respondent registered and is using the disputed domain name in bad faith. The Complainant submits evidence that the Respondent has used the disputed domain name in emails with a The Chemours Company address in Singapore sent to the Complainant's subsidiaries' employees in Asia to direct them to transfer invoice payments to an unknown bank account, and argues that the fraudulent use of the disputed domain name to perpetrate email scams constitutes bad faith use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to succeed in its claim, the Complainant must demonstrate that all three elements listed in paragraph 4(a) of the Policy have been satisfied:

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

Paragraph 15(a) of the Rules provides that a panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Furthermore, paragraphs 10(b) and 10(d) of the Rules provide that a panel shall ensure that the parties are treated with equality and shall determine the admissibility, relevance, materiality, and weight of the evidence.

Paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, the Rules, a panel shall draw such inferences therefrom as it considers appropriate.

In the present matter, the Respondent did not reply to the Complainant's contentions.

While the Respondent's failure to respond does not automatically result in a decision in favor of the Complainant, the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see [WIPO Overview 3.0](#), paragraph 4.3).

A. Identical or Confusingly Similar

The test for the first element requires a reasoned but straightforward comparison between the Complainant's trademark and the disputed domain name.

The disputed domain name combines the CHEMOURS trademarks with the Top-Level Domain ("gTLD") ".com". The term "Chemours" is a coined or fanciful term without a common or dictionary meaning. The addition of the gTLD ".com" does not affect the fact that the disputed domain name incorporates and reproduces the Complainant's CHEMOURS trademarks with the addition of the letter "s" at the beginning of the second syllable. The Complainant argues that this is a clear instance of typo-squatting.

For the purpose of assessing identity or confusing similarity in the present matter, the Panel considers that the addition of a single letter at the beginning of the second syllable of the disputed domain name is barely noticeable and that the disputed domain name contains a common or obvious misspelling of the Complainant's CHEMOURS trademarks, which remain the dominant element of the disputed domain name (see [WIPO Overview 3.0](#), paragraph 1.9).

The Panel is thus satisfied that the disputed domain name is confusingly similar to the Complainant's trademarks for the purposes of the Policy.

B. Rights or Legitimate Interests

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, and finds no indication in the evidence that the Respondent could claim rights or legitimate interests of his own in the term "Chemsours". Nor do the record or the circumstances of the case point to any circumstances that may support rights or legitimate interests defense. The Respondent has chosen not to reply to the Complaint. Since the Respondent has no permission from the Complainant and chose not to respond on the merits, his registration of the disputed domain name, based on the evidence provided by the Complainant and absent any indication of circumstances that may support a rights or legitimate interest defense, is without rights or legitimate interests. Further, the use of the disputed domain name for fraud can never confer rights or legitimate interests upon the Respondent (see [WIPO Overview 3.0](#), section 2.13).

The Panel therefore finds that in the present case the Respondent does not have any rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant argues that the Respondent knew or could not have ignored the Complainant's well-known CHEMOURS trademarks, that the registration of the disputed domain name allows a finding of bad faith registration and that the use of the disputed domain name for fraudulent purposes commonly known as spear phishing constitutes bad faith use of the disputed domain name.

Previous panels have held that the use of a domain name for illegal activities such as phishing, or impersonation/passing off, are considered evidence of bad faith (see [WIPO Overview 3.0](#), section 3.1.4)

Here, the record notably shows that:

- (i) the Respondent used a privacy protection service and is located in the US,
- (ii) the term "Chemours" is a coined or fanciful term that *prima facie* could not have been chosen because of a dictionary or common meaning,
- (iii) the Respondent is well aware of the Complainant's trademarks since he used them in the signature block of emails to the Complainant's subsidiaries' employees seeking to misdirect and extract

payments, and is apparently aware of the Complainant's business dealings, invoicing and of certain of the Complainant's subsidiaries' employees' functions,

- (iv) the Respondent registered a domain name that fully incorporates the Complainant's trademarks with a common, obvious or intentional misspelling to attempt to mislead the Complainant's subsidiaries' employees, and
- (v) the Respondent used the disputed domain name for fraudulent purposes commonly known as spear phishing.

In the present case, the Panel is thus persuaded that the facts of this case as reflected in the limited record available in a UDRP proceeding unambiguously support a finding that the Respondent's registration and use of the disputed domain name was in bad faith.

D. Reverse Domain Name Hijacking

Paragraph 15 (e) of the Policy provides that if after considering the submissions a panel finds that a complaint was brought in bad faith, for example in an attempt at reverse domain name hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

In the present matter, (i) the Complainant's trademarks are a fanciful or coined term and are older than the disputed domain name, (ii) except for a single letter, the disputed domain name reproduces the trademark and domain name of Complainant in the country of residence of the Respondent and (iii) the disputed domain name was used for an email fraud scheme, so that Complainant could reasonably have considered that its claim could succeed on all three elements of paragraph 4 (a) of the Policy.

For the sake of completeness, the Panel therefore finds that the facts, evidence and possible inferences in the present matter do not support a finding of reverse domain name hijacking.

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 <chemsours.com> be transferred to the Complainant.

/Stefan Naumann/

Stefan Naumann

Sole Panelist

Date: March 7, 2023