

## **ADMINISTRATIVE PANEL DECISION**

Newell Brands Inc. v. Fred Anderson

Case No. D2023-0822

### **1. The Parties**

The Complainant is Newell Brands Inc., United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Fred Anderson, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <newallbrands.com> is 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 February 23, 2023. On February 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 24, 2023, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 February 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 20, 2023.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on March 29, 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 is a Delaware (United States) corporation headquartered in Atlanta, Georgia, United States, with over 200 subsidiaries worldwide producing and distributing a wide range of consumer products under well-known brands such as RUBBERMAID, PAPER MATE, SHARPIE, ELMER'S, COLEMAN, MARMOT, GRACO, CALPHALON, FOODSAVER, OSTER, SUNBEAM, and YANKEE CANDLE. Its predecessor Newell Rubbermaid was established in 1902. The Complainant is listed on the New York Stock Exchange, and the Complainant's group reported 2021 revenues of USD 10.6 billion. The group has operated a principal website at "www.newellbrands.com" (the "Complainant's website") since January 2015. The Complainant's website had more than 10 million individual visitors from December 2021 to December 2022. The Complainant also operates social media sites with more than 335,000 followers.

The Complainant holds trademark registrations for NEWELL as a word mark in Germany (number 39515502, registered November 7, 1997) and Brazil (number 822246007, registered January 17, 2006). The Complainant also holds multiple registrations for a figurative mark in which the words NEWELL BRANDS are the dominant element, such as European Union trademark registration number 015318538 (registered October 18, 2016), and United States trademark registration number 5863435 (registered September 17, 2019).

The Registrar reports that the disputed domain name was registered on April 29, 2022 by the Respondent, who appears to be an individual residing in the State of Illinois, United States, listing no organization and using a Gmail contact email address. Given the use of the disputed domain name as described below, there is reason to suspect that these details may be fictitious.

The disputed domain name resolves only to an error message, and the Internet Archive's Wayback Machine has no archived screenshots associated with the disputed domain name.

However, the disputed domain name has been used for phishing emails in furtherance of an apparent fraud scheme. These emails were sent in June and July 2022 using the disputed domain name to create an email account with the name of an actual employee of the Complainant, a logistics and transportation manager. The emails attempted to obtain delivery information from a shipping firm and fraudulently change the delivery address for goods destined for the Complainant. The shipping company became suspicious, and the Complainant discovered the attempted fraud.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant asserts that the disputed domain name is an example of typosquatting, differing by a single letter ("a" in place of "e") from the Complainant's registered NEWELL and NEWELL BRANDS trademarks. The Complainant states that the Respondent does not have permission to use these marks and that the Respondent also has no other evident rights or legitimate interests in the disputed domain name, not having a corresponding name and not having made any use of the disputed domain name for a website but rather for phishing emails.

The Complainant argues that there is no conceivable good-faith use of the disputed domain name and cites the "passive holding" doctrine of *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) to argue for a finding of bad faith despite the absence of a website associated with the disputed domain name. In any event, the Complainant contends that the Respondent's phishing attacks, impersonating an employee of the Complainant to obtain sensitive information and perpetrate fraud, reflects bad faith in the registration and use of the disputed domain name.

## 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; and (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 Complainant holds trademark registrations for NEWELL as a word mark and for a figurative mark in which the words NEWELL BRANDS are dominant. The disputed domain name differs by one letter from the name "Newell" and adds the word "brands" as in the NEWELL BRANDS mark. The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. As usual, the addition of the generic Top-Level Domain ".com" may be disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Panel 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) 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 demonstrated trademark rights and denies any association with the Respondent. The Respondent does not have a name corresponding to the disputed domain name, and the disputed domain name has been used only in connection with an email phishing and fraud scheme. Thus, the Complainant

has made a *prima facie* case, and the burden of production shifts to the Respondent. The Respondent did not respond to the Complaint.

The Panel concludes, therefore, that the Respondent has not met its burden of production, and the Complainant prevails on the second element of the Complaint.

### **C. Registered and Used in Bad Faith**

The Policy, paragraph 4(b), furnishes a list of circumstances that “shall be evidence of the registration and use of a domain name in bad faith”, but these are not exhaustive. WIPO UDRP panels have found bad faith in cases involving illicit conduct such as phishing, malware, and the solicitation of payment of fraudulent invoices (see [WIPO Overview 3.0](#), section 3.4, “Can the use of a domain name for purposes other than hosting trademark-abusive content constitute bad faith?”).

The illicit conduct here – phishing for confidential business information and soliciting the delivery of valuable goods to a location other than the Complainant’s – similarly represents bad faith. The Respondent was clearly aware of the Complainant, creating a domain name that differed by a single letter from the Complainant’s mark and domain name and impersonating an employee of the Complainant with a relevant job function. The Respondent sent the phishing emails within two months after registering the disputed domain name. Accordingly, the Panel finds evidence of bad faith both in the registration and use of the disputed domain name.<sup>1</sup>

The Panel concludes 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 disputed domain name, <newwallbrands.com>, be transferred to the Complainant.

*/W. Scott Blackmer/*

**W. Scott Blackmer**

Sole Panelist

Date: April 12, 2023

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<sup>1</sup> The Complainant cites the “passive holding” doctrine as well (see [WIPO Overview 3.0](#), section 3.3), because the Respondent has not used the disputed domain name for a website. However, the Panel does not consider this doctrine necessary or appropriate in a case such as this one, where the Respondent has made actual use of the disputed domain name, in this instance for an email account employed for fraudulent purposes.