

ADMINISTRATIVE PANEL DECISION

Critter Control, Inc. v. Lori DeMoor
Case No. D2023-0838

1. The Parties

The Complainant is Critter Control, Inc., United States of America (“United States”), represented by Arnall Golden Gregory LLP, United States.

The Respondent is Lori DeMoor, United States, represented by Steve Walker, United States.

2. The Domain Name and Registrar

The disputed domain name <crittercontrolorlando.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2023. On February 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 27, 2023, 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 March 2, 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 amended Complaint on March 2, 2023.

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 March 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 26, 2023. On March 11, 2023, the Respondent requested a four-day extension to respond. Accordingly, the due date for Response was extended to March 30, 2023. On March 28, 2023, the

Respondent requested further extension of 14 days to respond. This further extension was granted through April 13, 2023, on an exceptional basis. The Response was filed with the Center April 13, 2023.

The Center appointed W. Scott Blackmer, Lawrence K. Nodine, and William F. Hamilton as panelists in this matter on May 19, 2023. The Panel finds that it was properly constituted. Each member of 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 corporation established under the law of the State of Michigan in 1987 and headquartered in Atlanta, Georgia. For nearly 40 years, the Complainant has provided wild animal and rodent removal services for homes and businesses, ultimately serving most of the United States, under the service mark CRITTER CONTROL.¹ The Complainant advertises a toll-free telephone number through a variety of media and operates a website at “www.crittercontrol.com” (the “Complainant’s website”).

The Complainant holds United States trademark registrations for CRITTER CONTROL, including the following:

Mark	Registration Number	Registration Date
CRITTER CONTROL (word)	1503278	September 6, 1988
CRITTER CONTROL (design plus words)	4462748	January 7, 2014
CRITTER CONTROL (design plus words)	5289605	September 19, 2017

The Registrar reports that the disputed domain name was created on January 15, 2017, and is registered by the Respondent Lori DeMoor, listing no organization and giving a postal address in the State of Florida, United States. The disputed domain name redirects to a website (the “Respondent’s website”) at “www.dr-critter.com”, headed “Dr. Critter Wildlife Control”.² The Respondent’s website advertises the services of a “family-owned” wildlife control company in Sanford, Florida (adjacent to Orlando) serving customers “throughout the southeastern United States”, with an emphasis on the humane removal of rodents, reptiles, bats, birds, squirrels, raccoons, skunks, and other wildlife, and subsequent cleanup of the affected premises. According to the Respondent’s website, the founder and president of the enterprise is Steven DeMoor, “aka ‘Dr. Critter’”, who founded the business with a partner in 1995 or 1996 (both years appear on the website) and renamed it “Dr. Critter” in 2014. The Panel notes that the online database of the Florida Division of Corporations does not reveal a legal entity with a corresponding name registered in the state.

The Respondent’s website highlights the Respondent’s wildlife removal services in the same central Florida cities and counties that are covered by the Complainant’s similar services, as shown on the pages of the Complainant’s website advertising services in “Central Florida” and “Greater Orlando”. The Complainant currently has 19 locations in Florida and refers to its Orlando office as “Critter Control of Greater Orlando”, as shown on the Complainant’s website.

¹ The Panel notes that “critter” (derived from “creature”) simply means an animal, according to the online Merriam-Webster Dictionary.

² The Response and screenshots from the Internet Archive’s Wayback Machine indicate that this redirection began in January 2023 in connection with a new marketing program. Before that, the disputed domain name was parked at a landing page stating only that the domain name was registered but might be available through the Registrar’s brokerage service.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name incorporates its registered CRITTER CONTROL trademark in its entirety and that the Respondent is not associated with the Complainant and has no permission to use its mark.

The Complainant observes that the Respondent does business as "Dr. Critter", not "Critter Control", and uses the disputed domain name to redirect Internet users to the Respondent's website at "www.drccritter.com". The Complainant argues that this cannot be a *bona fide* use of the disputed domain name, as it is misleading and intended to divert customers from the Complainant, especially from the Complainant's Orlando, Florida, office. The Complainant argues further that this reflects bad faith in the registration and use of the disputed domain name, as an attempt to misdirect Internet users for commercial gain.

B. Respondent

The Respondent contends that "critter control" and "critter control Orlando" are "generic" or "descriptive" terms, similar to "pest control" or "wildlife control", applied to the Orlando metropolitan area that the Respondent serves. "Respondent has been providing critter control services in the Orlando area for nearly thirty years as a family-owned business. Respondent has always used the terms 'critter' and 'control' in describing its service offerings, as is normal industry practice".

The Respondent asserts that the United States Patent and Trademark Office (USPTO) would likely find the Complainant's CRITTER CONTROL mark (the "Mark") merely descriptive under "current" standards, giving examples of its descriptive use today. The Yelp and Thumbtack apps, for example, which give consumers access to directories of local service providers, use "critter control" as a category. Moreover, the Respondent provides a list of companies apart from the Complainant that use "critter control" in their domain names, often including a geographic name.

The Respondent reports that it has registered more than 30 other descriptive domain names relevant to its services, such as <orlandosnakeremoval.com>, <raccoonexperts.com>, <snakeremovalflorida.com>, and <wildlifeproblems.com>. The Respondent currently redirects these to the Respondent's website, as it does with the disputed domain name, as part of its marketing program.

"This is done to avoid confusion and to be crystal clear to the user about who they've found. Respondent never uses 'fake' or 'shell' landing pages that would mislead a consumer to believe they had arrived anywhere other than the Dr. Critter Wildlife Control website."

The Respondent points out that the term "critter control" is not used on the Respondent's website. The website uses the Respondent's name and logo, not an approximation of the Complainant's name, logo, or content.

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 CRITTER CONTROL. The disputed domain name incorporates that term in its entirety, adding a geographic term, “Orlando”, which does not avoid a finding of confusing similarity. See *id.*, section 1.8. The mark is readily recognizable in the disputed domain name (see *id.*, section 1.7). The addition of the Top-Level Domain “.com” may be disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Respondent misperceives the requirements of this first element under the UDRP. The issue is not whether the words “critter” or “control” or combination of these words appears in numerous books and articles or in advertising but whether the Mark (when used in a promotional context) designates the Complainant. The registration of the Mark with the United States Patent and Trademark Office definitively answers this question.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s mark and 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 observed that the Respondent is not known by a corresponding name and has used the disputed domain name to redirect to its own, competing commercial website. The Complainant has specifically disavowed providing the Respondent with permission to use the disputed domain name or the Mark. There is no evidence that the Respondent has conducted any *bona fide* business under the disputed domain name itself or is commonly known by the disputed domain name. The

Respondent's website is labelled "Dr. Critter Wildlife Control", and Mr. DeMoor by his own account has long been known as "Dr. Critter". Thus, the Complainant has established a *prima facie* case, which shifts the burden of production of evidence of rights or legitimate interests on this point to the Respondent.

The Respondent claims a legitimate interest in using the disputed domain name in connection with a long-established, *bona fide* commercial service offering that is described by the disputed domain name. The Respondent acknowledges that the business is not known by a corresponding name, so its claim rests on the credibility of its argument that the disputed domain name was selected for its descriptive value rather than for its trademark value, *i.e.*, to exploit the reputation of its direct competitors in the Orlando area. In that case, the use could not be deemed to be "in connection with a *bona fide* offering of goods or services" (see [WIPO Overview 3.0](#), section 2.10), a question that involves many of the same facts at issue in the discussion of bad faith in the following section. A phrase such as "critter control" may have both trademark meaning and descriptive meaning depending on context. A competitor has the right to make fair use of the descriptive meaning, but not the trademark meaning. When the competitor's use mixes fair-use descriptive use and potentially infringing trademark use, confusion is likely. The Respondent does have the right to exploit the descriptive connotations of a domain name, but not the trademark connotations. The question is, in the face of the Complainant's trademark, which connotation is the Respondent exploiting here.

When a phrase such as "critter control" appears on a webpage, one can readily differentiate between descriptive fair use and trademark use, but the Respondent does not actually use the term "critter control" on the Respondent's website. Instead, the website uses the descriptive term "wildlife control" under the Respondent's own brand name. The Respondent contends that even though the Respondent has no webpage associated uniquely with the term comprising the disputed domain name and does not use the term on its own website to which the disputed domain name redirects, the Respondent has a legitimate right to use the phrase as part of the Respondent's Search Engine Optimization ("SEO") marketing program for its website. However, a respondent who intends to make fair descriptive use of a disputed domain name may do so only if it avoids confusion with trademarks. Where, as here, the Respondent's use of the disputed domain name (as opposed to the website to which it resolves) provides no context for differentiating between the descriptive and trademark meanings of the terms comprising the disputed domain name, confusion is likely and, therefore, does not fall under the safe harbors of Policy paragraph 4(c).

Importantly, the disputed domain name is comprised of not only "critter control," but also "Orlando." While not determinative, the adding "Orlando," suggests the "critter control" modifies an entity that exists at a location, rather than a type of service. The inclusion of a geographic term following a trademark often has been found to suggest that the domain name is affiliated with a local affiliate of the trademark owner. See, *e.g.*, *Les Parfumeries Fragonard v. [name Redacted]*, WIPO Case No. [D2022-4186](#) ("Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation, even in the presence of an additional term and, especially, in the case of the addition of a geographic term, which is seen as tending to suggest sponsorship or endorsement by the trademark owner."); *American Honda Motor Co., Inc. v. Mitchell Huddleston*, WIPO Case No. [D2011-0076](#) (quoting *Toyota Motor Sales, USA, Inc. v. Tabari*, 610 F.3d 1171, 1179 (9th Cir. 2010): "[s]ites like trademark-USA.com, trademark-of-glendale.com or e-trademark.com will also generally suggest sponsorship or endorsement by the trademark holder [...]"). Therefore, the Respondent's incorporation of the geographic term "Orlando" in the disputed domain name weighs further against a finding of descriptive fair use.

The Panel finds that the Respondent has not shown that it is merely exploiting the descriptive value of the relevant term in the disputed domain name itself (also noting the redirection to a website using the Respondent's own "Dr. Critter" brand), rather than its trademark meaning referring to the Complainant. Accordingly, the Panel concludes that the Complainant prevails on the second element of the Complaint. This conclusion is further

supported by the Panel's assessment of the facts surrounding the Respondent's acquisition of the disputed domain name, discussed in connection with the issue of the third element of the Complaint, bad faith.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", including the following:

"(iv) by using the domain name, you [respondent] have intentionally attempted to attract, for commercial gain, Internet users to your [respondent's] web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your [respondent's] website or location or of a product or service on your website or location."

The Complainant asserts that the Respondent was aware of the Complainant and its trademark and sought to create confusion among consumers, especially in the Orlando area. Given that they are direct competitors in this service and geographic market, that is a *prima facie* reasonable assertion. The Respondent does not deny prior awareness. Importantly, the Panel finds actual evidence of such knowledge in the Respondent's own attachments relating to the history of its acquisition of the disputed domain name.

The Respondent explains that she purchased the disputed domain name from a company called NameTailor. The Respondent offers evidence that the Complainant previously owned the disputed domain name but allowed it to lapse, whereupon NameTailor purchased the disputed domain name and offered to sell it back to the Complainant, which declined. NameTailor then offered to sell the disputed domain name to the Respondent. During their negotiations, neither NameTailor nor the Respondent used "Critter Control" as a generic term. Both understood that "Critter Control" referred to the Complainant specifically. On January 16, 2017, NameTailor sent an email to the contact email address on the Respondent's website asking if the Respondent would like to purchase the disputed domain name. The Respondent "Dr. Critter" promptly replied on the same day, inquiring about the price and asking, "Why aren't you selling this to Critter Control?" Thus, the Respondent was well aware of the Complainant and its potential interest in a domain name incorporating its name and mark. NameTailor responded, "We did offer the site to Critter Control first, but they said they have no interest." Notably, both the Respondent and NameTailor capitalized "Critter Control" and both were manifestly referring to the Complainant ("they said they have no interest"). The Respondent purchased and then parked the disputed domain name for six years and then started redirecting it to the Respondent's website as part of a new SEO marketing program.

The Respondent suggests that the Complainant somehow waived its rights to the disputed domain name by not purchasing it prior to the Respondent's purchase and that the Complainant is now engaged in an unfair effort to recapture the disputed domain name after the Respondent purchased the disputed domain name. This argument rings hollow. The Complainant was not under a duty to purchase a domain name (which it previously held) that would clearly cause customer confusion. The burden is on a competitor not to register and use a domain name that trades on a competitor's mark.

Furthermore, the Response refers to NameTailor as a "squatter": "Ironically, the Respondent purchased crittercontrolorlando.com from a squatter who themselves had no legitimate connection to the domain. . . . Respondent, who actually performs critter control services, has returned the domain to a good faith use & purpose."

This passage reflects the Respondent's assumption that because the Respondent purchased the disputed domain name, it does not matter that the Respondent knew that the former owner of the disputed domain name was a "squatter" who acted in bad faith. Accepting the Respondent's narrative, NameTailor was aware of the

Complainant when it purchased the disputed domain name after it lapsed. That is why it first offered to sell the disputed domain name to the Complainant. When the Complainant rejected the offer, NameTailor offered the disputed domain name to the Respondent, the Complainant's competitor. Accepting the Respondent's narrative, NameTailor's conduct may be considered bad faith registration and use. The Respondent's apparent assumption is that because she purchased the disputed domain name in what she alleges was good faith, the predecessor's bad faith is purged and her continued ownership of the disputed domain name is insulated from challenge under the Policy.

It is not clear to the Panel that the intent or conduct of a prior owner of a domain name necessarily either assists, or harms a subsequent purchaser. A prior registrant could very well be acting in good faith but this would not shield a subsequent purchaser who acts in bad faith. Equally, merely because a prior registrant was acting in bad faith, this would not mean that a subsequent purchaser could not act in good faith. (Here, both the prior registrant and the Respondent appear to have acted in bad faith.)

The Respondent's other defenses against a finding of bad faith are similarly unconvincing. As discussed in the preceding section, the Respondent argues that the Complainant's mark is inherently descriptive, and the Respondent acquired and used the disputed domain name for its descriptive value. The disputed domain name does describe commercial activities in which both the Complainant and the Respondent have been engaged for decades in the Orlando, Florida area, and the Respondent clearly has a recent practice of registering relevant, descriptive domain names and redirecting them to the Respondent's website. But the Complainant's mark is long-established, and the USPTO found it to have acquired distinctiveness, as a brand associated with the Complainant, long before the Respondent registered the disputed domain name. The Respondent admittedly knew of the mark and its association with the Complainant, a competitor, when the Respondent acquired the disputed domain name, and the acquisition history shows that the Respondent was acutely aware of the history of the disputed domain name and its potential value in association with the Complainant.

The Respondent asserts that "critter control" is generic and submits evidence of several examples of "generic usage". The Panel agrees that the Respondent's evidence shows that there is evidence of generic usage, but this evidence is not sufficient to overcome the Complainant's federal trademark registration, which is presumed to be valid. Although United States trademark law does not control UDRP proceedings, where, as here, both parties reside in the United States, and any subsequent proceeding in court would be controlled by United States law, it is appropriate to consider United States law (see [WIPO Overview 3.0](#), section 4.15). Although the Respondent offers relevant evidence including numerous examples of generic use of "critter control," this evidence is not sufficient to support a finding by this Panel that the Complainant's CRITTER CONTROL trademark is generic. "If a plaintiff has a federal registration, it constitutes a strong presumption that the term is not generic and defendant bears the burden of overcoming the presumption." McCarthy on Trademarks § 12.12. Moreover, the standard is "not whether the term has some significance to the public as a generic name [...], but whether its generic meaning is its principal significance. [...] If some people regard the contested designation as a generic name, while others regard it as a mark, the term must be placed in either the 'generic' pigeonhole or in the 'trademark' category. The result of the primary significance rule is that majority usage controls." McCarthy on Trademarks § 12.6.

The most meaningful evidence of "majority usage" on this record of genericness is the Respondent's own use when it negotiated the purchase of the disputed domain name in 2017. It is telling, as noted above, that the Respondent immediately asked the former owner of the disputed domain name why he was not selling it to the Complainant. The Respondent clearly understood that "Critter Control" referred to a single known source — the Complainant. The Respondent recognized the unique potential value of the disputed domain name to the Complainant above others in the "critter control" business in the Orlando area.

On balance, the record strongly suggests that the Respondent, as a direct and local competitor of the Complainant, registered (via purchase) and used the disputed domain name in significant part for its trademark value, in the hope of attracting consumers who recognize the Complainant's name from long-term national and local promotion of its mark. The Respondent argues that its website is not imitative and site visitors would not be confused as to source or affiliation once they arrived at the Respondent's website. But the confusion engendered by the Respondent's use of the disputed domain name exploits the Complainant's investment in marketing and reputation, and leads consumers to an immediate competitor, and this represents bad faith for Policy purposes. The Respondent may not credibly argue that any confusion would be cleared up when the Internet users visit the Respondent's website (also noting the lack of any disclaimer on the website). Whether this is true or not, the Respondent may not use a confusing domain name to lure unsuspecting Internet users to its site.

The Panel concludes on this record that the Complainant has established the third element of the Complaint, bad faith.

These facts also reinforce the finding above that the Respondent has not established its claim of rights or legitimate interests in the disputed domain name in connection with a "*bona fide*" commercial offering under the second Policy element.

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 <crittercontrolorlando.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Presiding Panelist

/Lawrence K. Nodine/

Lawrence K. Nodine

Panelist

/William F. Hamilton/

William F. Hamilton

Panelist

Date: June 2, 2023