

## **ADMINISTRATIVE PANEL DECISION**

**Critter Control, Inc. v. Jeffrey Geller**  
**Case No. D2023-0839**

### **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 Jeffrey Geller, United States.

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

The disputed domain name <crittercontrolboston.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 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 25, 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 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. The Respondent sent two emails to the Center on March 10, 2023, but did not submit any formal response. On March 28, 2023, the Center informed the Parties of the Commencement of Panel Appointment Process.

The Center appointed Evan D. Brown as the sole panelist in this matter on April 6, 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 has for almost 40 years been in the business of providing wild animal and rodent removal services. It owns the trademark CRITTER CONTROL which it has registered in the United States (Reg. No. 1,503,278 registered on September 6, 1988). The Complainant operates throughout the United States, including through a location in Boston, Massachusetts. It uses the name “Critter Control of Boston” for this location.

According to the Whois records, the disputed domain name was registered on June 23, 2016. The Respondent has used the disputed domain name to redirect to the website that advertises services that are directly competitive with the services that the Complainant provides under its CRITTER CONTROL mark, both in and near in Boston, Massachusetts, and other areas.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

The Respondent sent two emails to the Center, but did not formally reply to the Complainant’s contentions. In the two almost identical emails, the Respondent contended that he no longer owned the disputed domain name, stating that he had cancelled his “service plan”.

#### **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is 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 respect of the disputed domain name, and (iii) the disputed domain name has been registered and is being used in bad faith. The Panel finds that all three of these elements have been met in this case.

##### **A. Identical or Confusingly Similar**

This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the CRITTER CONTROL mark by providing evidence of its trademark registration.

The disputed domain name is confusingly similar to the Complainant’s mark. The disputed domain name incorporates the mark in its entirety and merely adds the term “boston”, which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s CRITTER CONTROL mark. See [WIPO Overview 3.0](#), section 1.8. The CRITTER CONTROL mark remains sufficiently recognizable for a showing of confusing similarity under the Policy.

Accordingly, the Panel finds that the Complainant has succeeded on this first element under the Policy.

## **B. Rights or Legitimate Interests**

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that it has not authorized the Respondent to use the CRITTER CONTROL mark in the disputed domain name and that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, or in a legitimate noncommercial or fair manner. Instead, the Respondent has used the disputed domain name to redirect to a website featuring services competitive to those of the Complainant, specifically targeting a geographical area (Boston) where the Complainant does business under its mark.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor. Moreover, the Respondent himself has apparently conceded his lack of rights or legitimate interests in the disputed domain name given his claims to having cancelled his "service plan" in relation to the registration of the disputed domain name.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

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

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

Because the Complainant's CRITTER CONTROL mark has been in use for so many years and is the subject of a federal registration, and absent any formal response from the Respondent explaining its reasoning for selecting the disputed domain name, the panel finds it more likely than not that the Respondent was aware of the Complainant and its services when it registered the disputed domain name. Knowledge of the Complainant and its mark is also indicated by the fact that the Respondent chose to include the Complainant's mark together with a geographic term ("Boston") referring to an area in which the Complainant does business. Lastly, along with the Respondent's use of the disputed domain name to redirect to services in direct competition with the Complainant, the Respondent seems to operate a competing business within Boston, given that the Respondent's emails included a signature line citing, and were sent from an email address citing, "Critter Catchers", with a physical address referencing a town within Boston. Accordingly, given the proximity of the Respondent and his involvement in the same industry, it stretches credulity that the Respondent was not aware of the Complainant when registering the disputed domain name. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name.

The facts indicate that the Respondent is using the disputed domain name in bad faith, by using it to intentionally attempt to divert, for commercial gain, Internet users to a website featuring services competitive to the Complainant's services. *Deutsche Lufthansa AG v. Domain Admin, Whois Privacy Corp / Ryan G Foo, PPA Media Services*, WIPO Case No. [D2015-2346](#); *Net2phone Inc v. Dynasty System Sdn Bhd*, WIPO Case No. [D2000-0679](#).

The Panel finds that the Complainant has established this third element under the Policy.

## 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 <crittercontrolboston.com> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: April 22, 2023