

ADMINISTRATIVE PANEL DECISION

Dewberry Engineers Inc. v. ryan brat
Case No. D2023-0923

1. The Parties

The Complainant is Dewberry Engineers Inc., United States of America (“United States” or “U.S.”), represented by McCandlish Lillard, P.C., United States.

The Respondent is ryan brat, United States.

2. The Domain Name and Registrar

The disputed domain name, <dewbrery.com>, is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 2, 2023. On March 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 2, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 3, 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 3, 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 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 28, 2023.

The Center appointed Dennis A. Foster as the sole panelist in this matter on April 3, 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 an engineering, architecture, real estate services and emergency management firm founded some sixty years ago, and now has more than fifty locations in the United States.

The Complainant owns the service marks DEWBERRY (U.S. Trademark Registration No. 2,991, 043) and DEWBERRY AND BERRY DESIGN (U.S. Trademark Registration No. 2,991, 044), both registered on September 6, 2005, for a wide variety of architectural, design and engineering services.

The Complainant is also the owner of the domain name <dewberry.com>, which was registered on October 4, 1998.

The Respondent registered the disputed domain name <dewbrery.com> on February 2, 2023. The disputed domain name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

- The disputed domain name, <dewbrery.com>, is on its face confusingly similar to Complainant's domain name <dewberry.com>, and to Complainant's DEWBERRY service marks. In a side-by-side comparison of the disputed domain name and the DEWBERRY service marks, the disputed domain name incorporates the service marks entirely, swapping positions for only the letters "e" and "r" in the disputed domain name. It thus does not sufficiently alter the overall impression of the two terms and leaves them confusingly similar in appearance.
- The Respondent should be considered to have no rights or legitimate interests with respect to the disputed domain name because "dewbrery" is not a registered trademark or service mark. Moreover, there is no evidence that the Respondent is commonly known by the disputed domain name or that he is making a legitimate noncommercial or fair use of the name. A Google search of <dewbrery.com> does not return any results connected to the Respondent. In fact, the search directs the user to the homepage for the Complainant's domain name <dewberry.com>. The Respondent has not created a website offering goods or services in connection with <dewbrery.com>.
- The Respondent registered the disputed domain name on February 2, 2023, and there would be a high likelihood of confusion between a <dewbrery.com> website and the Complainant's <dewberry.com> website. Based on the nearly identical nature of the disputed domain name to <dewberry.com>, the Respondent's registration and use of the disputed domain name indicate that they have been done for the specific purpose of trading on the name and reputation of the Complainant and its DEWBERRY marks.
- The only plausible explanation for registration of <dewbrery.com> is that the disputed domain name was registered for one or more improper purposes, such as diverting traffic from the Complainant's website or seeking to sell the disputed domain name to the Complainant. While the Complainant is not yet aware of use of the disputed domain name, it contends that the inactive or passive holding of the disputed domain name by the Respondent still demonstrates bad faith use in the case of a well-known Complainant.
- It has frequently been decided in past UDRP decisions that the passive holding of a domain name that incorporates a well-known or distinctive trademark without a legitimate purpose does not prevent a finding that the disputed domain name is being used in bad faith under paragraph 4(a)(iii) of the Policy. Here, there is nothing to indicate that the Respondent is using the disputed domain name for any proper use.

B. Respondent

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

6. Discussion and Findings

In accordance with Policy paragraphs 4(a)(i) - (iii), the Panel may find for the Complainant and grant a transfer of the disputed domain name if the Complainant proves that:

- The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided copies of its two service marks registered with the United States Patent and Trademark Office ("USPTO"): DEWBERRY (USPTO Registration No. 2,991,043) and DEWBERRY AND BERRY DESIGN (USPTO Registration No. 2,991,044), both registered on September 6, 2005, for a wide variety of architectural, design and engineering services. Under the Policy, these service mark registrations are conclusive proof that the Complainant has service mark rights in the DEWBERRY name.

The disputed domain name, <dewbrery.com>, is on its face confusingly similar to both of Complainant's DEWBERRY service marks. In a comparison of the disputed domain name and the DEWBERRY service marks, the disputed domain name incorporates the service marks entirely, swapping only the letters "e" and "r" in the name; a practice commonly known as typosquatting. It thus does not sufficiently alter the overall commercial impression of the two terms and leaves them confusingly similar. As decided in *Tolkien Estate Limited v. Domain Investments*, WIPO Case No. [D2021-2571](#), "the removal of two letters to the Complainant's trademark does not negate the confusing similarity between the disputed domain name and the Complainant's trademark under the Policy."; see also *Panavision, Inc. and Panavision International, L. P. v. Ed Meyer, d/b/a/ Panavisions Eyewear and Sunglasses, Domains by Proxy, Inc., and M.P.W., Inc. d/b/a Panavisions Eyewear and Sunglasses, Inc.*, WIPO Case No. [D2004-0002](#) (finding that "the addition or subtraction, of a single character, such as a letter or number, to a mark for use in a domain name has not precluded Panels from finding the domain name to be identical or confusingly similar to a mark").

The Panel finds that the Complainant has satisfied its burden of proof under Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

It is widely accepted under the Policy that the Complainant is only required to assert that the Respondent has no license or permission to use its trademark in the disputed domain name, and then the burden of production shifts to the Respondent to come forward and show that it does have rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.1. Here, by inference, the Complainant has so stated, and the Respondent did not file a response. Nevertheless, as is now accepted practice in Policy decisions, the Panel will examine the case file to see if there is any evidence that the Respondent may have rights or legitimate interests in the disputed domain name. In doing so, the Panel will accept as true all reasonable contentions put forward by the Complainant.

There is no evidence that the Complainant authorized the Respondent to register the domain name, and the Panel finds this cannot be considered to be conducting a *bona fide* business under paragraph 4(c)(i) of the Policy.

Furthermore, as Complainant points out, there is no evidence that the Respondent is commonly known by the disputed domain name, and thus paragraph 4 (c)(ii) also is not applicable.

The Panel therefore concludes that the Complainant has sustained its burden of proof to show that the Respondent has no rights or legitimate interests in the disputed domain name per paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

While the Complainant is not yet aware of Respondent's use of the disputed domain name, the Complainant asserts that the inactive or passive holding of the disputed domain name by the Respondent still demonstrates bad faith use in the case of a well-known Complainant. The Panel agrees.

The Complainant started its business some sixty years ago and now has multiple locations in the United States. By the nature of its business, *i.e.*, architectural, engineering and ecological design services, the Complainant may not be well-known to the general public, but it apparently is well-known to the cognoscenti in its business sector. The Panel notes that the Respondent is located in the same Washington, D.C. metropolitan area where the Complainant is located. It is thus likely that the Respondent was familiar with the Complainant and its commercial standing when he registered the disputed domain name.

The Panel finds that the Respondent registered and is passively holding the disputed domain name because he is aware it could be a valuable commodity. While passive holding is not one of the enumerated bad faith provisions of paragraph 4(b) of the Policy, those provisions are not exhaustive, and other Policy panels have found that passive holding constitutes bad faith under circumstances comparable to those in this case.

See [WIPO Overview 3.0](#), Section 3.3. See also *Advance Magazine Publishers Inc. and Les Publications Condé Nast S.A. v. ChinaVogue.com*, WIPO Case No. [D2005-0615](#).

The Panel finds that the Respondent has registered and is using the disputed domain name in bad faith, and thus the Complainant has sustained its burden of proof under paragraph 4(a)(iii) of 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, <dewbrery.com>, be transferred to the Complainant.

/Dennis A. Foster/

Dennis A. Foster

Sole Panelist

Date: April 16, 2023