

ADMINISTRATIVE PANEL DECISION

Authentic Brands Group, LLC v. Ev Vincent
Case No. D2023-0924

1. The Parties

Complainant is Authentic Brands Group, LLC, United States of America (“United States”), internally represented.

Respondent is Ev Vincent, United States.

2. The Domain Name and Registrar

The disputed domain name <authenthics.com> is registered with Wild West Domains, LLC (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 3, 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 (John Doe), and from the Respondent identified by reference to Annex 1 to the Complaint (Registration Private, Domains By Proxy, LLC), and contact information in the Complaint. The Center sent an email communication to Complainant on March 6, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on March 6, 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 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. Respondent did not submit any response. Accordingly, the Center notified the Parties of Respondent’s default on March 28, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on April 7, 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

Complainant operates a portfolio of widely recognized brands such as Reebok, Elvis Presley, Judith Leiber, Marilyn Monroe, Lucky Brand, David Beckham, Forever 21, Shaquille O'Neal, Barneys New York, Nine West, Nautica, Eddie Bauer, Juicy Couture, and Muhammad Ali. It has traded as "Authentic Brands Group" since 2008, and has registered the domain names <authenticbrandsgroup.com>, <authenticbrands.com> and <authentic.com> in early 2009.

The disputed domain name was registered on February 8, 2023. At the time of this Decision, it did not resolve to an active website. The record contains evidence that Respondent used the disputed domain name to generate emails to Complainant's business partners.

5. Parties' Contentions

A. Complainant

Complainant's contentions may be summarized as follows:

Under the first element, Complainant states that its brands generate approximately USD 25 billion in global annual retail sales and operate in over 150 countries, including over 9,400 retail locations and 356,000 points of sale. Complainant acquired its first brand in 2011 and has gained national recognition as a multifaceted lifestyle, entertainment and digital platform and, while its "Authentic Brands Group" mark is not registered, Complainant has invested significantly in marketing and enforcing the Authentic Brands Group brand. The disputed domain name is a clear misspelling of Complainant's mark.

Under the second element, Complainant states that Respondent has not been licensed, contracted, or otherwise permitted by Complainant to use the AUTHENTIC trademark or to apply for any domain names incorporating it. Complainant was notified by a third party that Respondent has been actively using the disputed domain name for illegitimate activities that include sending misleading and deceptive emails in attempts to scam Complainant's current business partners out of substantial sums of money.

Under the third element, Complainant states that Respondent was well aware of Complainant's trademark at the time Respondent registered the disputed domain name, Complainant's brand is well known around the world. Respondent has sent emails to Complainant's business partners in which Respondent attempts to impersonate one of Complainant's employees by using Complainant's logo and address in the signature block. In the emails, Respondent offering a "discount" for early payment of invoices and provided information for bank transfers. Complainant additionally states that Respondent used a privacy shield and that the disputed domain name is being passively held.

Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name 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

As a threshold matter, the Panel must decide whether Complainant has standing to bring a UDRP action based on unregistered trademark rights.

Based on the evidence presented, the Panel finds that Complainant has established its unregistered rights in the AUTHENTIC BRANDS mark. It has provided evidence that its mark has, through use, become a distinctive identifier, which consumers associate with Complainant’s goods and services. The Panel finds that Complainant has provided evidence of use of this mark on its website, through marketing activities, on a branded credit card, through subscription services, and elsewhere. Such use predates the registration of the disputed domain name and supports Complainant’s assertion of acquired distinctiveness of an unregistered mark. See, for example, *UITGERVERIJ CRUX v. W. FREDERIC ISLER*, WIPO Case No. [D2000-0575](#). See also WIPO Overview of WIPO Panel Views on selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.3.

Consistent with prior UDRP panel practice, the Panel finds that Respondent has deliberately targeted Complainant’s mark, and this fact supports a finding that Complainant’s mark has achieved significance as a source identifier for purposes of the Policy. See [WIPO Overview 3.0](#), section 1.3.

Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

In comparing Complainant’s AUTHENTIC BRANDS mark with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to this mark as the dominant part of the mark (“authentic”) is clearly recognizable within the disputed domain name, save for the addition of the letter “h” and the additional letter “s”. The Panel notes that Complainant has registered the domain name <authentic.com>. The disputed domain name is clearly a deliberate misspelling of Complainant’s domain name and trademark, whereby it also omits the additional element “brands”. See [WIPO Overview 3.0](#), section 1.7 and 1.9.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not authorized by Complainant and has no rights in the AUTHENTIC BRANDS mark. Considering the evidence presented that Respondent has engaged in efforts to target Complainant’s business partners by using the disputed domain name to impersonate Complainant’s employee and attempt to defraud third parties, the Panel finds that the disputed domain name targets Complainant’s AUTHENTIC BRANDS mark. Such use cannot confer rights or legitimate interests.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent has not provided any rebuttal of Complainant’s *prima facie* case and has therefore not proved rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is commonly known by the disputed domain name, or that there are any circumstances or activities that would

establish Respondent's rights therein. Complainant has brought forward evidence that Respondent has engaged in a deceptive scheme using the disputed domain name. Respondent has not refuted this evidence. Such conduct precludes a finding of rights or legitimate interests on the part of Respondent. See [WIPO Overview 3.0](#), section 2.13.1.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Complainant has demonstrated Respondent's bad faith registration of the disputed domain name. Complainant provides evidence that its rights in the AUTHENTIC BRANDS mark predate the registration of the disputed domain. The disputed domain name is clearly a misspelling of the dominant element "authentic" of Complainant's mark and a direct misspelling of Complainant's domain name at <authentic.com>. Under such circumstances, the Panel finds that the registration of the disputed domain name that is identical or confusingly similar to a distinctive trademark by an unaffiliated entity can by itself create a presumption of bad faith on the part of Respondent. See [WIPO Overview 3.0](#), section 3.1.4. Respondent has not provided any information that would rebut this presumption.

The Panel also finds that Complainant has demonstrated Respondent's bad faith use of the disputed domain name. The evidence provided by Complainant indicates that Respondent was perpetuating a deceptive scheme by using the disputed domain name to impersonate Complainant's employee to seek to unlawfully divert funds from Complainant's business partners. Consistent with UDRP panel practice, such conduct manifestly demonstrates bad faith. See [WIPO Overview 3.0](#), section 3.4.

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, <authentics.com>, be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: April 21, 2023