

## **ADMINISTRATIVE PANEL DECISION**

**Dellner Couplers AB v. Zackary M Osborn**  
**Case No. D2023-1304**

### **1. The Parties**

The Complainant is Dellner Couplers AB, Sweden, represented by AWA Sweden AB, Sweden.

The Respondent is Zackary M Osborn, United States of America.

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

The disputed domain name <dellnercouplers.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 27, 2023. On March 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 28, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 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 April 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 the Respondent of the Complaint, and the proceedings commenced on April 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 9, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on May 23, 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 Swedish original equipment manufacturer of the entire range of products for train connection systems. Founded in 1941, the Complainant has locations on five continents.

The Complainant owns multiple trademark registrations consisting of or including DELLNER and DELLNER COUPLERS (the Complainant's Marks) in various jurisdictions, including the United States (National trademark registration DC DELLNER COUPLERS no. 2553271 registered on March 26, 2002, National trademark registration DC DELLNER no. 4427078 registered on November 5, 2013, International trademark DELLNER no. 1134085 registered on May 25, 2012, designating the United States), where the Respondent purportedly resides.

The disputed domain name was registered on June 9, 2021. As per the evidence submitted with the Complaint, the disputed domain name resolves to a website containing pay-per-click (PPC) links to third party products competing or related to those protected by the Complainant's Marks.

A cease-and-desist letter sent by the Complainant on February 15, 2023, received no response.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant submits and contends that:

- The Complainant's Marks are used globally and are widely known and highly recognizable, and their registrations significantly predate the registration of the disputed domain name.
- The disputed domain name entirely incorporates the Complainant's Marks without any distinctive addition, and is therefore confusingly similar to the Complainant's Marks.
- The disputed domain name resolves to a web site containing PPC links to products competing with those of the Complainant. The links are clearly targeting the Complainant's services and most likely generating earnings to the Respondent.
- The use of a domain name for pay-per-click links is not a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use. Therefore, it does not confer on the Respondent any rights or legitimate interests in the disputed domain name and constitutes bad faith registration and use.

Based on the above, the Complainant requests that the disputed domain name be transferred to the Complainant.

##### B. Respondent

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

#### 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- (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.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

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

The disputed domain name incorporates the Complainant's Marks, followed by the generic Top-Level Domain ("gTLD") ".com".

As highlighted in section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the addition of the generic gTLD such as ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test.

Therefore, the relevant comparison to be made is with the second-level portion of the disputed domain name, *i.e.*, "dellnercouplers". As highlighted in section 1.7 of the [WIPO Overview 3.0](#), the threshold test for confusing similarity typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. It is amply clear that the disputed domain name includes the Complainant's Marks and that Complainant's Marks are clearly identifiable within the disputed domain name, and this is a sufficient element to establish confusing similarity, as held by previous UDRP panels (*e.g.*, *Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello*, WIPO Case No. [D2020-1955](#); *Virgin Enterprises Limited v. Domains By Proxy LLC, Domainsbyproxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1923](#); *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1409](#)).

Accordingly, the Panel finds that disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights. Therefore, the Complainant has established paragraph 4(a)(i) of the Policy.

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

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services; or
- (ii) it has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) it 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.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since: (a) the Respondent has not acquired any trademark rights for DELLNER COUPLERS and (b) the Respondent cannot demonstrate any *bona fide* use nor a legitimate noncommercial or fair use of the disputed domain name. In this connection, the Complainant has provided evidence that the disputed domain name resolves to a website containing PPC links to third party products competing with, or related to the products protected by the Complainant's Marks.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Here the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The disputed domain name has been used for competing commercial pay-per-click links, which does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use (see section 2.9 of the [WIPO Overview 3.0](#)). By not submitting a response, the Respondent has failed to invoke any circumstance, which could have demonstrated any rights or legitimate interests in the disputed domain names under paragraph 4(c) of the Policy.

Therefore, the Panel finds that the Complainant has established paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, which includes: (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location".

The disputed domain name incorporates the Complainant's Marks and resolves to a website displaying PPC links directly targeting the business of the Complainant. In the Panel's view, it is not conceivable that the Respondent did not have in mind the Complainant's Marks when registering the disputed domain name. Such fact suggests that the disputed domain name was registered in bad faith (see [WIPO Overview 3.0](#), section 3.2.2).

With respect to use in bad faith, the disputed domain name has been used for competing commercial pay-per-click links. The Respondent is probably deriving some income from each click on those links thereby capitalizing on the Complainant's trademark and goodwill for its own profit. The Panel finds the use of the confusingly similar disputed domain name to lure Internet users to websites hosting links to competing products is evidence of bad faith. See *Sodexo v. 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2020-1171](#), *Intercontinental Exchange Holdings, Inc. v. 殷磊 (Yin Lei)*, WIPO Case No. [D2021-1395](#) and that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its webpage, by creating a likelihood of confusion with the Complainant's Marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's webpage.

On this basis, the Panel finds that the Complainant has satisfied also the third and last element of the Policy, paragraph 4a(iii).

## **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, <dellnercouplers.com> be transferred to the Complainant.

*/Anna Carabelli/*

**Anna Carabelli**

Sole Panelist

Date: June 6, 2023