

ADMINISTRATIVE PANEL DECISION

Davey Bickford v. New Biz

Case No. D2023-2019

1. The Parties

The Complainant is Davey Bickford, France, represented by TMark Conseils, France.

The Respondent is New Biz, United States of America (“United States”).

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 12, 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 May 15, 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 May 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 20, 2023.

The Center appointed Ian Lowe as the sole panelist in this matter on June 28, 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 French company founded in 1831 engaged in the manufacture of detonators, firing systems, and explosive chain priming components. Its annual turnover is around EUR 100 million. The Complainant was acquired by Chilean company Enaex S.A. ("Enaex") in 2015.

The Complainant (together with its associate companies) is the proprietor of numerous registered trademarks comprising DAVEY BICKFORD, including International trademark number 436083 DAVEY BICKFORD registered on January 16, 1978 and United States trademark number 4126112 DAVEY BICKFORD registered on April 10, 2012. Enaex is the proprietor of a number of registered trademarks comprising ENAEX, including Chile trademark number 881219 ENAEX registered on March 27, 2010 and United States trademark number 5370375 ENAEX registered on January 2, 2018.

The Complainant is the registrant of several domain names comprising DAVEY BICKFORD, including <daveybickford.com> registered on December 10, 2001 and <daveybickfordenaex.com> registered on April 20, 2018, which redirects to the Enaex Group website, dedicated to the Enaex international network, presenting its products and services, including those sold under the DAVEY BICKFORD trademark.

The <daveybickfordenaex.com> domain name is used by the Complainant for all its email addresses.

The Domain Name was registered on August 2, 2022. It does not resolve to an active website. However, email servers have been configured on the Domain Name and used to send at least one email purporting to be sent by an employee of the Complainant to a third party reproducing the detailed email signature of the genuine employee. The email was copied to several other email addresses based on the Domain Name, all purporting to be those of employees of the Complainant. The email addresses in question were in the same format as those of the equivalent genuine email addresses, namely [firstname.lastname@daveybickfordsenaex.com], rather than [firstname.lastname@daveybickfordenaex.com].

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its DAVEY BICKFORD and ENAEX trademarks, that the Respondent has no rights or legitimate interests in respect of the Domain Name and that the Respondent registered and is using the Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (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.

A. Identical or Confusingly Similar

The Complainant has uncontested rights in the trademark DAVEY BICKFORD, both by virtue of its many trademark registrations around the world and as a result of the goodwill and reputation acquired through use by the Complainant over many years. Its parent company, Enaex, similarly has uncontested rights in the trademark ENAEX. Ignoring the generic Top-Level Domain (“gTLD”) “.com”, the Domain Name comprises the entirety of the Complainant’s mark and that of Enaex, with the addition of the letter “s”. In the Panel’s view, this amounts to classic “typosquatting” intended to take advantage of email recipients not noticing the additional letter, and intended to be confusingly similar to the Complainant’s mark and that of Enaex. The incorporation of the ENAEX mark and the additional letter does not prevent a finding of confusing similarity. Accordingly, the Panel finds that the Domain Name is confusingly similar to a mark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has made out a strong *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. The use of the Domain Name for an email address intended to deceive recipients into believing that emails were sent from a legitimate account of the Complainant could not possibly demonstrate rights or legitimate interests. The Respondent has chosen not to respond to the Complaint and has accordingly failed to counter the *prima facie* case established by the Complainant. In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

In the circumstances, given the nature of the Domain Name and its use for fraudulent emails purporting to originate with an employee of the Complainant, the Panel considers it inconceivable that the Respondent did not have the Complainant and its rights in the DAVEY BICKFORD mark in mind when it registered the Domain Name. The registration and subsequent use of the Domain Name to send fraudulent emails of the kind described above amounts to paradigm bad faith registration and use for the purposes of paragraph 4(a) 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 Domain Name <daveybickfordsenaex.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: July 13, 2023