

## **ADMINISTRATIVE PANEL DECISION**

Wickes Building Supplies Limited v. Timothy Huskey  
Case No. D2023-3054

### **1. The Parties**

The Complainant is Wickes Building Supplies Limited, United Kingdom, represented by Stobbs IP Limited, United Kingdom.

The Respondent is Timothy Huskey, United States of America (“United States”).

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

The disputed domain name <boycottwickes.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 17, 2023. On July 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 19, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 21, 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 July 26, 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 August 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 21, 2023. The Response was filed with the Center on August 21, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on September 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.

On September 12, 2023, the Complainant filed an unsolicited supplemental filing to the Center. In reply, on September 18, 2023, the Respondent filed an unsolicited supplemental filing to the Center.

#### **4. Factual Background**

The Complainant is a home improvement retailer listed on the London Stock Exchange with over 230 stores in the United Kingdom and profits of GBP 75.4 million in 2022. The Complainant has traded under the WICKES mark since 1972, which it has numerous trade mark registrations for, including United Kingdom Trade Mark Registration No. 00001221188 WICKES in classes 2, 6, 7, 8, 9, 11, 16, 1, 7, 19, 20, and 27 with a registration date of June 21, 1984.

The Respondent is an individual residing in California, United States, who registered the Domain Name on June 20, 2023. The Domain Name resolves to a parked page by the Registrar, hosting pay-per-click (“PPC”) advertising site featuring advertisements for various home improvement goods and services.

#### **5. Parties’ Contentions**

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

The Complainant contends that the Domain Name is confusingly similar to its well-known WICKES mark, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that it has been used for PPC advertisements for the Respondent’s commercial gain, taking advantage of the Complainant’s reputation to attract users to competing goods and services.

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

The Respondent contends as follows. The word “boycott” in the Domain Name obviates confusion in the minds of consumers as a pejorative term unlikely to be used by a trade mark owner.

The PPC advertisements to which the Domain Name resolves were placed without the Respondent’s knowledge or consent, and the Respondent has never received any compensation from them.

The Respondent asserts his right to use the Domain Name as a protest site for purposes of criticism of the Complainant, under paragraph 4(c)(iii) of the Policy. The Respondent points to his usage of the essentially identical domain name <boycottwickes.co.uk> as well as other domain names consisting of the word “boycott” and well-known brands for protest sites in this regard.

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

##### **6.1 Preliminary Issues**

##### **A. Parties’ Supplemental Filings**

After the panel appointment, and during drafting of this Decision, the Complainant and the Respondent each made unsolicited supplemental filings.

Paragraph 10 of the Rules provides panels with the authority to determine the admissibility, relevance, materiality, and weight of the evidence, and also to conduct the proceedings with due expedition. Accordingly, unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel, pursuant to its general powers under paragraph 12 of the Rules. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6.

Neither of the supplemental filings present anything new that could not be gleaned or anticipated from the record available prior to the supplemental filings. The record, as it stands, is sufficient for the Panel to come to a decision, and the supplemental filings do not, in any event, contain any new matter that would have led the Panel to decide the matter differently. The Panel therefore declines to admit the supplemental filings.

## 6.2 Substantive Issues

### A. Identical or Confusingly Similar

A domain name consisting of a trade mark and a negative or pejorative term is considered confusingly similar to a complainant's trade mark for the purpose of satisfying standing under the first element ([WIPO Overview 3.0](#) at sections 1.8 and 1.13). Accordingly, the combination of the Complainant's trademark WICKES with the term "boycott" does not prevent a finding of confusing similarity. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Complainant claims in essence that the Respondent has no rights or legitimate interests in the disputed domain name in view of the commercialization of the Domain Name through PPC links that capitalize on the Complainant's trademark and reputation.

The Respondent claims the safe harbour under paragraph 4(c)(iii) of the Policy, specifically that his intent for the Domain Name was to set up a noncommercial protest site against the Complainant, which constitutes fair use. The Respondent relies in this respect on his usage of the domain name <boycottwickes.co.uk>, which, as at the time of drafting of this Decision, resolved to a website critical of the Complainant and referring to various alleged controversies involving the Complainant. The Respondent also presented evidence of his registration of various other domain names incorporating "boycott" plus well-known brands, and his usage of them for similarly critical websites, including <boycottbudlight.org>, <boycott-target.org>, <boycottbenandjerrys.com>, and <boycottcallofduty.com>. The Respondent claims, in his role as an apparent journalist, to be interested in such domain names due to the relevant companies having been subject to publicized controversies. On the face of the websites in question, no commercial purpose is apparent.

Paragraph 4(c)(iii) of the Policy is phrased in the present tense, *i.e.*, "you are making...", unlike paragraphs 4(c)(i) and (ii) which anticipate past, and in the case of (i), also future usage. At the time of the Complaint and drafting of this Decision, the Respondent was not making any noncommercial or fair use of the Domain Name, but instead was using the Domain Name for a commercial purpose that competed with the Complainant through PPC links for competing goods and services. Thus, *prima facie*, on a literal reading of paragraph 4(c)(iii), the Respondent must fail in his reliance upon that specific safe harbour.

However, the Panel recognises that the purpose behind paragraph 4(c)(iii) was to protect legitimate freedom of expression. The Panel's view is that a strict literal interpretation of 4(c)(iii), requiring respondents to produce evidence of active use of domain names for a legitimate purpose as at the filing of a complaint in all circumstances, could undermine the purpose of protecting freedom of expression in some scenarios. The Panel quotes from the decision in *Wal-Mart Stores, Inc. v. Walsucks and Walmarket Puerto Rico*, WIPO Case No. [D2000-0477](#), in this respect:

“The Panel accepts that domain name registrants cannot always be expected to make immediate legitimate use of names since preparation is needed to launch websites. Some period reasonable under the particular circumstances must therefore be allowed between the time of registration of a domain name and the commencement of its legitimate use. Evidence of preparation to make legitimate use, appropriate to the context, should be accepted as giving rise to legitimate interests (for a reasonable period). The Panel agrees with Respondent that if trademark holders could force the transfer of confusingly similar ‘freedom of expression’ names immediately upon their registration, this might chill legitimate protest or criticism activities on the Internet.”

Additionally, the Panel notes that the list of safe harbours under paragraph 4(c) is not an exhaustive one. Even if a respondent’s conduct does not fit neatly into a literal reading of 4(c)(iii) in the sense that they are not presently making any legitimate noncommercial or fair use of the domain name, in light of the overarching purposes of the Policy in combatting cybersquatting while protecting legitimate freedom of expression, it should still be possible, in the right circumstances, for a respondent to claim a safe harbour where the clear intention was to use the domain name for genuine, noncommercial freedom of expression.

In this case, the Respondent’s evidence establishes use of similarly composed domain names for noncommercial criticism sites, including another domain name relating to the Complainant (*i.e.*, <boycottwickes.co.uk>). The Domain Name is also, given its composition, intrinsically a criticism/protest domain name, and is likely to be interpreted as such by users (see *Standard & Poor’s Financial Services LLC v. Christian Mendes*, WIPO Case No. [D2013-1546](#)). This all indicates that it was more likely than not the Respondent’s intention to use the Domain Name in a similar fashion to those domain names that he has used for noncommercial criticism. The Complainant also adduced a list of over 20 domain names owned by the Respondent comprised of the term “boycott” plus a well-known brand. As far as the Panel can tell, none of these domain names have been used for any obvious bad faith purpose, with most of them not resolving to any website at all. The fact that the Respondent had not used the Domain Name for his claimed purpose as at the filing date of the Complaint should not be the end of the matter, with the underlying purpose of the freedom of expression safe harbour in mind.

The Panel views with some scepticism the Respondent’s claim that he was prevented from publishing the criticism site he intended for the Domain Name given the lock imposed by the Registrar which allegedly prevented the Respondent from publishing his intended website. Paragraph 1 of the Rules, at the definition of “Lock”, expressly states that the lock “does not affect the resolution of the domain name”, and the lock, per the definition, was clearly designed to prevent cyberflight and not alterations to the resolution of the domain name. Nevertheless, the evidence in the record, on balance, does show a *prima facie* intention to use the Domain Name for a legitimate criticism site, and the Panel does not believe that it would be reasonable, in the circumstances of this case, to insist that the Respondent should have used the Domain Name as such in the relatively short period of less than a month between registration of the Domain Name and filing of the Complaint. The Panel’s view is that, in the particular circumstances of this case, including the direct evidence showing the Respondent’s probable intentions of legitimate criticism, this is not a “reasonable period” per the panel in *Wal-Mart Stores, supra*.

The Respondent has used the Domain Name for PPC advertisements competitive with the Complainant, which, *prima facie*, conflicts with the Respondent’s claim of legitimate noncommercial or fair use of the Domain Name. However, the Respondent has denied implementing those advertisements himself, or benefitting from them.

It is likely that these PPC advertisements were implemented by the Registrar automatically, for its own benefit, without any initiative from or benefit to the Respondent.<sup>1</sup> Thus it is clear that the Registrar does

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<sup>1</sup> Clause 10 of the Registrar’s Domain Name Registration Agreement provides as follows (abbreviated by the Panel for the sake of brevity):

“*Choosing Your Domain Name Settings.* When you register a domain name with GoDaddy, you will be prompted to choose your domain name settings during the checkout process. If you plan on using another provider for your website or hosting needs, then you

automatically apply parked pages, including third party advertising, to domain names registered using its services, without any initiative from the registrant, and without the registrant benefitting from it at all. In this case, the Domain Name's name servers are still set to the Registrar's own default "domaincontrol.com" name servers, thus, it is quite plausible that that is what happened here.

Importantly, unlike its default parking pages addressed above, the Registrar operates a paid monetization service, called "Cash Parking", whereby domain name registrants are able to share in the revenue generated from third party advertisements displayed at their domain names. The name servers for this service are different to those used for the default parking pages, and would appear to be hosted at "cashparking.com". See *Supercell Oy v. Registration Private, Domains By Proxy, LLC / Brian Gambrel*, WIPO Case No. [DCO2017-0045](#). Given that the Domain Name's name servers are set to the default and not the "Cash Parking" name servers, it is unlikely that the Respondent a) engaged the Cash Parking service; b) initiated the PPC advertisements; or c) benefitted from them commercially. Accordingly, the fact that the Domain Name has been used for PPC advertisements does not, in and of itself, in the particular circumstances of this case, contradict the Respondent's claimed intentions of legitimate criticism.

The Complainant adduced evidence showing that the Respondent had ostensibly registered three typo-squatting domain names targeting well-known brands in the past. Those domain names do, on their face, appear to have targeted well-known brands through typo-squatting, which is certainly something that must be weighed into the Panel's assessment of the likely intentions of the Respondent. However, those past domain names only have an indirect, inferential bearing on the Panel's assessment of the facts before it in this case, and the Panel's view is that the positive, direct evidence showing that the Respondent has used similarly composed "boycott" domain names for the purpose of noncommercial criticism, including of the Complainant, outweighs any negative inferences that might be drawn from the Respondent's past conduct in this respect.

On balance, bearing in mind that the overall burden of proof is on the Complainant, the Panel finds that the Complainant has not proven that the Respondent registered the Domain Name in order to use it for cybersquatting purposes, as opposed to planned use for a noncommercial criticism site, which he has in fact done with another domain name directed at the Complainant specifically. As such, the Panel need not consider the third element of bad faith.

The Panel is aware that the registration of multiple "boycott" domain names, and even some typos of known marks, casts some doubt on the Respondent's story, but to ascertain whether the Domain Name is a pretext for cybersquatting would appear to require more evidence than is available in the present proceeding.

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should enter the name servers of such provider when you choose your domain name settings. This will direct your domain name away from GoDaddy's name servers...

*GoDaddy's Default Settings.* If you do not direct your domain name away from GoDaddy's name servers as described above, GoDaddy will direct your domain name to a 'Parked Page' ('Default Setting')...

**Parked Page Default Setting.** GoDaddy's Parked Page service is an online domain monetization system designed to generate revenue (through the use of pay per click advertising) from domain names that are not actively being used as websites. If your domain name is directed to a Parked Page, you acknowledge and agree that GoDaddy may display both (a) in-house advertising (which includes links to GoDaddy products and services) and (b) third-party advertising (which includes links to third-party products and services) on your Parked Page through the use of pop-up or pop-under browser windows, banner advertisements, audio or video streams, or any other advertising means...In addition, you acknowledge and agree that all in-house and third-party advertising will be selected by GoDaddy and its advertising partners, as appropriate, and you will not be permitted to customize the advertising, or entitled to any compensation in exchange therefor."

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: September 28, 2023