

ADMINISTRATIVE PANEL DECISION

E. Enterprises, LLC v. Mark Eaton

Case No. D2023-3555

1. The Parties

Complainant is E. Enterprises, LLC, United States of America (“United States”), represented by Beggs & Lane, RLLP, United States.

Respondent is Mark Eaton, United States.

2. The Domain Name and Registrar

The disputed domain name <supposey.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 August 22, 2023. On August 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 24, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 September 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 26, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on September 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

Complainant started operating as a florist in Pensacola, Florida in 2012, and thereafter expanded its business to include wedding planning services and the rental of dishes, tableware, and related accessories for special events.

Respondent and his family operate a wedding rental business, also in Pensacola, Florida, called Marry Me Wedding Rentals, LLC ("Marry Me").

Complainant holds a registered trademark for SUPPOSEY, United States Patent and Trademark Office Reg. No. 4,951,337, registered on May 3, 2016 with an October 30, 2012 date of first use in commerce. Complainant operates a commercial website at the domain name <supposey.co>.

Respondent registered the Domain Name on January 15, 2015. The Domain Name apparently has never resolved to an active website.

In April 2023, Complainant states, its owner ("Chloe") received a phone call from someone stating that a USD 450 credit card charge had been made against the caller, and the charge was linked to the Domain Name.

On July 29, 2016, Chloe emailed the owner of Marry Me (Respondent's wife "Suzanne") about the Domain Name. Chloe's email stated:

"Hello Eatons,

I hope 2016 is going great for weddings for your business!

I am writing you to let you know that I have had issues with my clients visiting supposey.com, and it has become clear that there is a direct impact to my business to not own this domain, supposey.com.

I have become aware that you hold ownership to the domain www.supposey.com. This came as a bit of a shock to me, as I cannot seem to think of anything you would need to do with such a particular site, as we operate in the same town, and offer similar services.

My LLC holds ownership to a Federal Trademark Registration for the mark Supposey for wedding services and such. A copy of the Registration is attached.

Since I have been using the mark Supposey and own the Federal Registration for wedding services, in order to end the confusion, I wish to buy the url domain name www.supposey.com from you for the cost of the domain name, plus \$50.00 for your time to transfer it to me. Go Daddy does have a Trademark Department and can handle this, however I thought it best for future business interaction to settle this together.

I look forward to hearing from you soon, as this is a priority for my business.

Please let me know you have received this email, and if you have any questions."

Twelve minutes later, on July 29, 2016, Suzanne emailed Chloe, stating in part:

"Hi Chloe,

Confidentially, I can assure you I did not do this. It all stems from the fact that you learned as much about Tim's dance floor as you could, befriendng him in the process and then got an identical floor. I get it, it's competition. It is something very personal and I'm not sure Tim will ever get over it. Neither will his dad.

I don't like to burn bridges in the business or fight dirty, but others do not share my view.

I don't know how I can unring this bell without alarming the Papa Bear. I'll see what I can do."

According to Complainant, the "Tim" referred to above is the son of Suzanne and Respondent, and "Papa Bear" is Respondent.

Respondent has not denied any of the foregoing allegations.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has common law rights in the trademark SUPPOSEY through registration demonstrated in the record. The Panel also concludes that the Domain Name is identical to that mark.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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 Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Respondent has not come forward to articulate any *bona fide* reason for registering the Domain Name. Based on the undisputed record in this case, the Panel concludes that Respondent's motivation in registering the Domain Name was to somehow wreak commercial vengeance upon Complainant, Respondent's direct competitor in the same town, for some perceived dirty trick Complainant allegedly played on Respondent's business (namely, obtaining a dance floor similar to Respondent's). This motive does not vest Respondent with any right or legitimate interest vis-à-vis the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. On this record, the Panel finds it clear that Respondent targeted Complainant's mark (which is a fanciful mark, and not a dictionary word) when registering the Domain Name, and has used the Domain Name to disrupt the business of his direct and local competitor. This constitutes bad faith registration and use within the meaning of the above-quoted Policy paragraph 4(b)(iii).

Complainant has established Policy paragraph 4(a)(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 Domain Name <supposey.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: October 12, 2023