

ADMINISTRATIVE PANEL DECISION

Corning Incorporated v. COMSTOCK TELCOM, COMSTOCK TELECOM Case No. D2023-3629

1. The Parties

Complainant is Corning Incorporated, United States of America (“United States”), represented by Gowling WLG (Canada) LLP, Canada.

Respondent is COMSTOCK TELCOM, COMSTOCK TELECOM, United States.

2. The Domain Name and Registrar

The disputed domain name <comIng.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 29, 2023. On August 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on September 8, 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 September 13, 2023.

The Center verified that the Complaint together with the amendment to 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 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 4, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 10, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on October 16, 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 following facts appear from the Complaint (as amended) and its annexes, which have not been contested by Respondent.

Complainant is one of the world's leading innovators in materials science, with a more than 165-year track record of inventions and expertise in glass science, ceramic science, and optical physics along with its deep manufacturing and engineering capabilities to develop its products under the trademark CORNING (the "CORNING Mark") In 2018 Complainant generated USD 11.29 billion in revenue, and over USD 30 billion between 2016 and 2018.

Complainant also shows it incorporates the CORNING Mark into its official domain name <corning.com> which was registered on December 18, 1991, and has been used to access Complainant's official CORNING Mark website ("Official Website") to promote and offer its products to its to its customers under the CORNING Mark.

Complainant owns hundreds of trademark registrations around the world for the CORNING Mark for its glass and ceramics products, including the United States where Respondent is ostensibly located , see the following incontestable trademark registrations of record with the United States Patent and Trademark Office ("USPTO"):

United States Registration No. 618,649, CORNING, registered on January 3, 1956, for a range of glass products in International Classes 26 and 33, claiming a first use date for each of October 1878; and

United States Registration No. 918,421 CORNING, registered on August 17, 1971, for electric hotplates in International Class 21 and electric ranges and electric cooktops in International Class 34.

The Whois record shows Respondent registered the disputed domain name on December 5, 2022, and Complainant states that the disputed domain name has never resolved to an active website but shows with redacted email evidence that Respondent has used the disputed domain name to send emails and claims that Respondent masqueraded as Complainant to engage in a fraudulent email scheme by issuing email correspondence in association with the email address "[...].@comlng.com" to unsuspecting business partners of Complainant requesting payment of invoices, copying Complainant's official email address "[...].@coming.com" to aid in Respondent's impersonation to further its fraudulent email scheme.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is confusingly similar to Complainant's trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

A. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the CORNING Mark for its world renowned glass and ceramics products and manufacturing technology in its registrations for the CORNING Mark dating back to 1956. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting trademark registration documents in the name of Complainant or related entities and therefore, Complainant has demonstrated it has rights in the CORNING Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant’s rights in the CORNING Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant’s CORNING Mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. [WIPO Overview 3.0](#), section 1.7.

Prior UDRP panels have also held “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”. See, *L’Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); see also, *Wal-Mart Stores, Inc. v. MacLeod d/b/a/ For Sale*, WIPO Case No. [D2000-0662](#).

A side-by-side comparison between the disputed domain name and Complainant’s Mark shows the disputed domain name is almost identical to the CORNING Mark. Complainant’s CORNING Mark is incorporated in its entirety except Respondent has replaced the letters “r” and “n” with the letter “m”, and the letter “i” with the letter “l”. These alterations, sometimes referred to as homoglyphs where the particular shape of certain letters are combined to form a third misleading letter or a misleading substitution do nothing to prevent a finding of confusing similarity but constitute *prima facie* evidence of an intent on the part of Respondent to deceive the public.

Complainant contends that the disputed domain name is a purposeful misspelling of Complainant's CORNING Mark given Respondent's registration and use of the disputed domain name for a fraudulent purpose. While fraudulent purpose and use may be more appropriately considered below under the second and third elements of the Policy, for purposes of confusing similarity, the Panel finds that the distinctive elements of Complainant's mark remain recognizable within the disputed domain name in spite of Respondent's alterations.

Prior panels have held that a deliberate misspelling of a trademark registered as a domain name, which is intended to confuse Internet users, must be confusingly similar by design. See [WIPO Overview 3.0](#), section 1.9; See also *Allstate Insurance Company v. Rakshita Mercantile Private Limited*, WIPO Case No. [D2011-0280](#). Complainant's registered CORNING Mark is incorporated into and remains recognizable in the disputed domain name, followed only by the Top-Level Domain ("TLD") ".com". Prior UDRP panels have found the TLD, being viewed as a standard registration requirement, may typically be disregarded under the paragraph 4(a)(i) analysis. See, [WIPO Overview 3.0](#), section 1.11.1; see also *L'Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#).

Based on the above, this Panel finds that Respondent's alterations made to Complainant's registered CORNING Mark does not prevent a finding of confusing similarity between the disputed domain name and Complainant's CORNING Mark.

Accordingly, the Panel finds Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, a complainant is first required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, a complainant is generally deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in the disputed domain name. First, Complainant asserts that Respondent is not sponsored by or affiliated with Complainant in any way, nor is Respondent licensed, or otherwise authorized, be it directly or indirectly, to register or use, the CORNING Mark in any manner whatsoever, including in, or as part of, a domain name.

Most importantly, Complainant contends, and its evidence shows that although the disputed domain name resolves to an inactive website, Respondent's fraudulent activities undermine any claim of rights and legitimate interests. Respondent configured the disputed domain name as part of a fraudulent scheme to create the false impression that emails sent under the domain name were sent by Complainant and thereby unlawfully extract money from unsuspecting third parties believing Respondent to be Complainant. Prior UDRP panels have held that impersonating a complainant by using a disputed domain name as part of an email address in furtherance of a fraudulent scheme constitutes *prima facie* evidence of a lack of rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.13.

These facts establish Complainant's *prima facie* showing. Respondent has not provided any basis on which that showing may be overcome. Complainant has, therefore, successfully met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#). Paragraph 4(b) of the Policy sets out a

non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant contends that since Complainant has developed a distinctive and widely recognized reputation in the CORNING trademark, Respondent was no doubt aware of the CORNING Mark and intentionally targeted them in making their decision to configure and register the disputed domain name essentially identical to Complainant's CORNING Mark except for its intentional misspellings to impersonate Complainant.

Given the widespread recognition of Complainant's CORNING Mark worldwide shown in the evidence noted under Section 4 above, including United States, where Respondent appears to be located, the decades of registered use of the CORNING Mark prior to Respondent's assumed registration of the disputed domain name on December 5, 2022, and that Respondent is impersonating Complainant, there can be little doubt Respondent had actual knowledge of Complainant's rights when it registered the disputed domain name, which shows bad faith registration. See, e.g., *Asurion, LLC v. Super Privacy Service LTD c/o Dynadot*, WIPO Case No. [D2019-2326](#).

Further, the facts set forth above make it reasonable for the Panel to conclude it is more likely than not that Respondent targeted Complainant's trademark to use it to trade on Complainant's reputation and goodwill, and Respondent is found, therefore, to have registered and used the disputed domain name in bad faith. See *Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whols Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#).

The disputed domain name here is an intentional misspelling of Complainant's CORNING Mark to impersonate Complainant in order to perpetuate a fraudulent email scheme preying on unsuspecting Internet users, factors which this Panel agrees with prior decisions should be duly considered in assessing bad faith registration and use. See, e.g., *Screening Eagle Technologies AG v. James Rich, Company Limited*, WIPO Case No. [D2020-2057](#).

Third, while the disputed domain name does not resolve to an active website, Complainant provided evidence that an email address has been created in association with the disputed domain name "[...].@comIng.com" and it is likely being used as an email address in furtherance of a fraudulent scheme. Complainant contends therefore, that a finding of bad faith use is appropriate given the totality of facts here. The Panel finds that because Respondent's use of its disputed domain name for *per se* illegitimate activity such as phishing can never confer rights or legitimate interests, Respondent's behavior is manifestly considered evidence of bad faith. See *Screening Eagle Technologies AG v. James Rich, Company Limited*, *supra*.

Complainant's CORNING Mark has grown in recognition to the level of worldwide recognition, supporting the implausibility of any good faith use to which the disputed domain name may now be put. Accordingly, the disputed domain name is being used in an attempt to intentionally attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement as evidence of bad faith use under paragraph 4(b)(iv) of the Policy.

Complainant further contends that Respondent has engaged in an extensive pattern of unauthorized domain name registrations, having registered no less than 18 domain names in addition to the disputed domain name that is the subject of this proceeding.

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied paragraph 4(a)(iii) 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 disputed domain name, <comIng.com>, be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: October 30, 2023