

ADMINISTRATIVE PANEL DECISION

Cope plastics, Inc. v. Bonnie Van, Dpr Construction, David Helson
Case No. D2023-3733

1. The Parties

The Complainant is Cope Plastics, Inc., United States of America (“United States”), represented by Lewis Rice, LLC, United States.

The Respondents are Bonnie Van, Dpr Construction and David Helson, United States.

2. The Domain Names and Registrar

The disputed domain names <cope-plastic.com> and <cope-plastics.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 6, 2023. On September 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same date, the Registrar transmitted by email to the Center its verification response registrant and contact information for multiple underlying registrants which differed from the named Respondents (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on September 7, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to either amend the Complaint adding the Registrar-disclosed registrants as the formal Respondents and provide relevant arguments or evidence demonstrating that all the named Respondents are, in fact, the same entity and that the disputed domain names are under common control, or indicate which of the two disputed domain names will no longer be included in the current Complaint.

The Complainant filed an amendment to the Complaint and a consolidation request on September 12, 2023. On September 13, 2023, the Center sent an email communication to the Parties acknowledging that Complainant had provided at least *prima facie* grounds to warrant accepting the consolidation request, emphasizing, however, the Panel’s final determination of the consolidation request on appointment.

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 Respondents of the Complaint, and the proceedings commenced on September 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on October 4, 2023.

The Center appointed William F. Hamilton as the sole panelist in this matter on October 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 October 13, 2023, the Panel issued Administrative Panel Procedural Order No. 1 requesting the Complainant to:

1. Clarify the relevant mark (COPE and/or COPE PLASTICS) in which the Complainant claims unregistered trademark rights; and
2. Provide evidence of the unregistered trademark rights in the relevant mark in accordance with section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

On October 19, 2023, the Complainant filed its Response to Procedural Order No. 1 with Annexes. The Respondents did not reply to the Complainant's Response.

4. Factual Background

The Complainant has used the trademark COPE since 1946. The Complainant is in the plastics fabrication and materials engineering business. The Complainant has used the trademark COPE in its online advertising, on its shipping vehicles, at the Complainant's 22 locations across the United States, and in its communications with its customers and suppliers. The Complainant regularly attains over USD 100 million in yearly revenue. The Complainant has received numerous industry awards and recognitions. The Complainant serves over 7,000 customers in many industries. The Complainant owns the domain name <copeplastics.com>, registered on May 19, 1985, and promotes its services on Facebook and Instagram pages that feature the COPE trademark.

The disputed domain name <cope-plastic.com> was registered on January 6, 2023, by Respondent Bonnie Van. The disputed domain name <cope-plastic.com> does not resolve to an active website.

The disputed domain name <cope-plastics.com> was registered on September 20, 2022, by the Respondent David Helson. The disputed domain name <cope-plastics.com> does not resolve to an active website.

The disputed domain names have been used in connection with fraudulent purchase orders sent to Complainant's suppliers. Amended Complainant Annexes 25-34.

5. Preliminary Procedural Issue: Consolidation

The Complainant's request for consolidation is based upon the following facts and circumstances:

- (1) the identical nature of the communications and activities forming the fraudulent scheme involving both disputed domain names,
- (2) the identical privacy proxy provider for the disputed domain names,
- (3) the false contact information provided in connection with the registration of the disputed domain names.

The Respondents have not opposed the consolidation request.

The Panel further notes that along with the identical fraudulent scheme to which the disputed domain names were put, both disputed domain names feature an almost identical construction, with one disputed domain name merely being the plural version of its counterpart.

The Panel finds on the evidence provided that named Respondents are the same or related entities and that disputed domain names are under common control. The Panel thus finds that the consolidation of the Complainant's claims in a single proceeding against the Respondents would be equitable, fair, and non-prejudicial. The Panel further finds that a consolidated proceeding is procedurally efficient. See *Facebook, Inc. and Instagram, LLC v. Domain Administrator, Fundacion Privacy Services, Ltd.*, WIPO Case No. [D2019-2518](#).

6. Parties' Contentions

A. Complainant

The Complainant asserts common law rights in the Mark¹ based on the duration, intensity, and reach of the Mark's use in the Complainant's plastics fabrication and materials engineering services business. Annexes 40–56. A summary of the Complainant's use of the Mark is set forth in the above Factual Background of this Decision.

The Complainant asserts confusing similarity engendered by the disputed domain names.

The Complainant asserts that the Respondents have no rights or legitimate interests in the disputed domain names considering that Complainant never authorized the Respondents to use the disputed domain names, that the Respondents are not generally known by the disputed domain names, never operated a business under the disputed domain names, have not advertised the disputed domain names, and never engaged in any *bona fide* commercial activity in connection with the disputed domain names.

The Complainant also asserts that the Respondents knew or should have known of the Mark with reasonable investigation. The Complainant further asserts that the Respondents registered and used the disputed domain names in bad faith to send fraudulent purchase orders to the Complainant's suppliers.

B. Respondents

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

¹ The Complainant asserts unregistered trademark rights in "Cope Plastics" or "Cope Plastics, Inc." The Panel, however, finds that the Complainant has clearly established unregistered trademark rights in the word COPE which appears prominently inside the Complainant's banner logo:



Accordingly, the Panel will proceed to analyze this case based on Complainant's unregistered trademark COPE, herein referred to as "the Mark."

7. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain names were registered and are being used in bad faith.

A. Unregistered Trademark Rights

The Panel finds that the Complainant has established common law unregistered trademark rights in the Mark based upon the Complainant's detailed demonstration of the Complainant's continuous and extensive use of the Mark in connection with its services for over 70 years as set forth in the Factual Background of this Decision. The Complainant has thus demonstrated that the Mark has become a distinctive identifier which consumers associate with the Complainant's services. [WIPO Overview 3.0](#) section 1.3.

B. Identical or Confusingly Similar

The Panel finds that the disputed domain names are confusingly similar to the Mark. The disputed domain names reproduce the Mark in its entirety. A domain name which wholly incorporates a complainant's trademark is sufficient to establish confusingly similarity for the purposes of the Policy when, as here, the Mark is clearly recognizable within the disputed domain names, notwithstanding the addition of the words "plastic" or "plastics". WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8 ("where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographic, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element"). In this case, the Mark is clearly recognizable in the disputed domain name.

The generic Top-Level Domain of the disputed domain names, in this case ".com", may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1. *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#). See also [WIPO Overview 3.0](#) section 1.11.1.

The Complainant has met its burden under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Panel finds on the evidence presented that the Respondents have no rights or legitimate interests in the disputed domain names.

The Complainant has specifically disavowed providing the Respondents with permission to use the disputed domain names or the Mark. There is no evidence that the Respondents have conducted any *bona fide* business under the disputed domain names or are commonly known by the disputed domain names. The Complainant has established a *prima facie* case in its favor, which shifts the burden of production on this point to the Respondents. The Respondents, however, have failed to come forth with any evidence showing any rights or legitimate interests in the disputed domain names.

Moreover, the disputed domain names will likely confuse unsuspecting Internet users into believing the disputed domain names would resolve websites associated, sponsored, or affiliated with the Complainant and that communications associated with the disputed domain names are associated, sponsored, or affiliated with the Complainant. The use of the additional terms "plastic" or "plastics" to compose the disputed domain names further supports a risk of implied affiliation with the Complainant as such terms are directly associated with the Complainant and its activity, and thus, cannot confer rights or legitimate interests to the Respondents in respect of the disputed domain name. [WIPO overview 3.0](#), section 2.5.1.

Furthermore, the evidence of the case indicates that the disputed domain names have been used in connection with fraudulent activity, namely false purchase orders sent to Complainant's suppliers. This conduct prevents a finding of rights or legitimate interests of the Respondents in the disputed domain names. [WIPO Overview 3.0](#) section 2.13.1.

The facts and circumstances presented to the Panel demonstrate that the Respondents do not have any rights or legitimate interests in the disputed domain names. The Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following non-exhaustive scenarios:

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

The Panel finds on the evidence presented that the disputed domain names were registered and used in bad faith.

A simple Internet search, which should normally be undertaken before registering a domain name, would have quickly disclosed the Mark and Complainant's business activities under the Mark. The Mark is Well-known in the United States, where the Respondents are reportedly located, in connection with plastics fabrication. It strains credulity to believe that the Respondents innocently and unknowingly registered the disputed domain names composed of the nondescriptive Mark and terms ("plastic" and "plastics") directly related to the Complainant's plastics fabrication services.

Moreover, the Complainant has provided actual evidence in its Annexes to the Complaint that the disputed domain names are being used in connection with a fraudulent purchase order scheme that involves impersonating Complainant's employees to defraud Complainant's suppliers and trick Complainant's suppliers into shipping product to fraudulent locations presumably associated with the Respondents. The use of the disputed domain names in connection with such a fraudulent scheme is paradigmatic bad faith. *Insured Aircraft Title Service, LLC v. Emmanuel Buron*, [D2023-1854](#) (fraudulent scheme involving the disputed domain name and impersonating complainant's employees establishes bad faith). See also [WIPO Overview 3.0](#), section 3.4.

Finally, even ignoring the above compelling evidence of bad faith registration with no explanation or defense from the Respondents, it is difficult to conceive of any use that the Respondents might make of the disputed domain names without the Complainant's consent that would not involve bad faith. *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#) (where the reputation of a complainant in a given mark is significant and the mark bears strong similarities to the disputed domain name, the likelihood of confusion is such that bad faith may be inferred).

The Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

8. 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 names <cope-plastic.com> and <cope-plastics.com> be transferred to the Complainant.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: October 26, 2023