

ADMINISTRATIVE PANEL DECISION

Authentic Brands Group, LLC v. Jennifer Coviello
Case No. D2023-4478

1. The Parties

Complainant is Authentic Brands Group, LLC, United States of America, internally represented.

Respondent is Jennifer Coviello, United States of America.

2. The Domain Name and Registrar

The disputed domain name <authenticbrandsgroup.store> (hereafter “Disputed 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 October 27, 2023. On October 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 30, 2023, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to Complainant on November 1, 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 November 1, 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 November 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 23, 2023.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on December 7, 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

Authentic Brands Group, LLC (“Complainant”) owns a portfolio of media, entertainment, sport, luxe, fashion, beauty and wellness, home, active and outdoor brands. Headquartered in New York City, with offices around the world, Complainant connects (via trademark licenses and other agreements) brands with partners, operators, distributors, and retailers.

Complainant began using AUTHENTIC BRANDS GROUP as a business name and trademark (hereinafter sometimes the “Mark”) in connection with its branding services at least as early as 2008. In 2009, Complainant registered the domain name <authenticbrandsgroup.com>. Complainant also owns <authenticbrands.com> and <authentic.com>. Complainant acquired its first brand in 2011 and has expanded its acquisition portfolio over the last decade to over 50 global brands, including Reebok, Elvis Presley, Judith Leiber, Marilyn Monroe, Lucky Brand, David Beckham, Forever 21, Shaquille O’Neal, Barneys New York, Nine West, Nautica, Eddie Bauer, Juicy Couture and Muhammad Ali.

As evidence, Complainant submits its “brand book.” which is a promotional publication that asserts that Complainant’s brands generate over USD 29 billion in global annual retail sales and have an expansive retail footprint in more than 150 countries, including over 13,100 freestanding stores and shop-in-shops, and 370,000 points of sale.

Complainant alleges that it spends millions of dollars marketing its goods and services globally under the AUTHENTIC BRANDS GROUP brand and has undertaken extensive efforts to protect its business name and enforce such rights. For support, Complainant points to the submitted “brand book” exhibit, but there is no information in the exhibit which supports the alleged “extensive efforts to protect its business name and enforce such rights.” The brand book does not explain how the Mark is used separately from the many brands that Complainant owns and promotes.

The brand book does, however, quote several prominent media sources that praise Complainant and its founder. For example, Forbes magazine refers to Complainant as “An Authentic Powerhouse.” Another source (Business of Fashion) stated that “Reviving a broken brand is no easy task [. . .] Authentic Brands Group has done it again and again.”

The Disputed Domain Name was registered September 29, 2023.

Although no active website is associated with the Disputed Domain Name, Complainant submits evidence that Respondent has used the Disputed Domain Name to send emails fraudulently purporting to recruit for jobs at Complainant. On October 24, 2023, about one month after the Disputed Domain Name was registered, Complainant received a report from a potential employee who received an email solicitation that used the Disputed Domain Name as an address. The sender claimed to be a Human Resources Manager for Authentic Brands Group, LLC, and said she was recruiting for a position with Complainant, and offered background about Complainant, stating:

“COMPANY’S OVERVIEW

Who We Are

Authentic is a global brand, development, marketing and entertainment platform. Authentic elevates and builds the long-term value of more than 50 consumer brands and properties by partnering with best-in-class manufacturers, wholesalers and retailers.[. . .] Headquartered in New York City, Authentic has offices in major metropolitan cities including Los Angeles and Miami, as well as Toronto, Mexico City, London and Shanghai.”

After falsely describing fictitious employment opportunities at Complainant, the email asked the recipient to make a payment for “working materials” for “standard products” to be somehow used to complete an employment application. These materials were to be purchased from a “certified vendor accredited by the company,” to whom the sender would refer the recipient. The alert recipient of the scam reported it to Complainant with the subject line, “A Scammer is Posing as an HR Manager for YOUR COMPANY.”

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name. Complainant contends that it has common law rights in the Mark, that the Disputed Domain Name is identical to its Mark, that Respondent has no rights or legitimate interest in the Disputed Domain Name, which Respondent registered and is using in bad faith.

B. Respondent

Respondent did not respond to the complaint.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

Given Complainant's focus on the value of brands, and the extensive portfolio of registered marks for the many prominent brands that it owns, it is surprising that Complainant does not own a trademark registration for either AUTHENTIC BRANDS GROUP or AUTHENTIC. Instead, it claims unregistered rights in the Mark. Complainant avers that it spends millions of dollars marketing its goods and services globally under the AUTHENTIC BRANDS GROUP brand and has undertaken extensive efforts to protect its business name and enforce such rights, but Complainant submits no evidence in support of this claim, and the only evidence it does submit—its "brand book"—does not support these allegations. The threshold problem is that Complainant does not offer any foundation for the brand book evidence. How extensively is it distributed and to whom? Furthermore, like the allegations in the Complaint, the brand book intermingles statements about the brands that Complainant owns or promotes with statements about Complainant itself. For example, the brand book asserts: "Authentic boasts more than \$29 billion in global sales and has a retail footprint in more than 150 countries with 13,100 plus stores and shop-in shops," but neither the allegations nor the brand book says whether Complainant's Mark, as distinguished from the brands in Complainant's portfolio, is affixed to any of the products sold or appears in any of these retail stores.

Consequently, the Panel is unable to determine whether the alleged billions in sales and millions for advertising relate to the asserted AUTHENTIC BRANDS GROUP Mark, or, instead, relate to sales and promotion of the brands it owns or promotes.

These evidence deficiencies are significant and seriously undermine Complainant's claim of unregistered service mark rights. "Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning." [WIPO Overview 3.0](#), section 1.3. The Panel has no doubt that Complainant could marshal overwhelming evidence to substantiate its claim of common law rights, but it has not done so here.

The Panel nonetheless finds, for two reasons, that Complainant has common law rights in the Mark. First, the brand book includes evidence of media recognition of Complainant as a prominent brand management leader. See J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, (September 2023 edition) section 11.81 (industry recognition as circumstantial evidence of secondary meaning and strength of

mark). Second, and more importantly, Complainant submits evidence that Respondent is sending fraudulent emails impersonating Complainant. “The fact that a respondent is shown to have been targeting the complainant’s mark (e.g., based on the manner in which the related website is used) may support the complainant’s assertion that its mark has achieved significance as a source identifier.” [WIPO Overview 3.0](#), section 1.3.

The submitted evidence that Respondent has explicitly impersonated Complainant constitutes an admission that Complainant is well known as a specific and distinctive source, whose name is well known enough to serve as a lure to attract potential employee victims. This evidence is sufficient, especially when combined with the evidence of media recognition, to support a finding that Complainant has common law trademark rights in the Mark.

The Panel finds the entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Respondent has not rebutted Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for phishing, impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found bad faith use where Respondent used a domain name for illegal activity such as phishing, impersonation/passing off, or fraud. [WIPO Overview 3.0](#), section 3.4.

Given that the submitted evidence of fraudulent phishing emails surfaced within a month of the registration of the Disputed Domain Name, the Panel finds the obvious - that it is more probable than not that Respondent

was well aware of Complainant's rights when it registered the Disputed Domain Name and, indeed, registered the Disputed Domain Name for the express purpose of enabling a phishing scheme.

Having reviewed the record, the Panel finds Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that Complainant has established the third element 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 <authenticbrandsgroup.store> be transferred to Complainant.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: December 19, 2023