

ADMINISTRATIVE PANEL DECISION

Covanta Energy, LLC v. lee dafei
Case No. D2023-4482

1. The Parties

The Complainant is Covanta Energy, LLC, United States of America (“U.S.”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is lee dafei, Japan.

2. The Domain Name and Registrar

The disputed domain name <covantalab.com> is registered with CloudFlare, 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 31, 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 (DATA REDACTED) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 2023, and a reminder on November 17, 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 November 17, 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 November 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 12, 2023.

The Center appointed Alistair Payne as the sole panelist in this matter on December 20, 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 Complainant is part of a corporate group headquartered in New Jersey, United States. The group commenced business in 1939 when Ogden Corporation started as a public utility holding company and in 2001 changed its name to Covanta Holding Corporation, which is the parent company of the Complainant in this action. The Complainant provides sustainable waste and energy solutions and operates primarily in the United States and Canada.

The Complainant owns United States trade mark registration No 3451902 for COVANTA registered on June 24, 2008. It also owns the domain name <covanta.com> registered in 2000 from which it operates its main website.

The disputed domain name was registered on September 4, 2023, and resolves to a website that invites Internet users to log in by submitting their phone number and password or their name, phone number, post code, password, and a referral code. The disputed domain name is associated with a mobile “earning app” that purports to allow users to purchase so-called waste-to-energy commodity products.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that the disputed domain name wholly incorporates the Complainant’s COVANTA trade mark and is therefore confusingly similar to it and that the addition of the term “lab” does not prevent a finding of confusing similarity.

The Complainant says that the Respondent has no rights or legitimate interests in the disputed domain name. In particular it submits that the Respondent has not received any licence or other authorisation of any kind to make use of the Complainant’s trade mark in a domain name, or otherwise and that the Respondent cannot assert that prior to any notice of this dispute it was using, or had made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. It also says that the Respondent is not commonly known by the disputed domain name as the Respondent’s name bears no resemblance to the disputed domain name and there is nothing to indicate that the Respondent has obtained any registered trade mark rights for COVANTA. Neither says the Complainant is there any evidence that the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the disputed domain name is being used in connection with a so-called “Covanta Lab” app that purports to allow users to generate earnings by making deposits, with the possibility of withdrawing larger amounts at a later date. It says that the mobile app features images that have been misappropriated from the Complainant’s official website and that in order to make deposits, Internet users are required to provide their bank details, however that Internet users have subsequently reported that the mobile app does not allow for withdrawal of their deposits.

The Respondent notes that there is no contact information on the Respondent’s website, no disclaimer clarifying that it is not connected with the Complainant, and no financial regulatory information at all. According to the Complainant, the registrant’s information listed on the WhoIs record for the disputed domain

name includes the state/province of Xinjiang in China, while the registrant country is indicated as “Japan”. Accordingly, says the Complainant, the Respondent appears to have provided false contact information when registering the disputed domain name.

The Complainant infers that the Respondent is using the Complainant’s COVANTA trade mark in the disputed domain name and on the associated mobile app, to create confusion as to the source of the Respondent’s website and app in the furtherance of a fraudulent advance-fee scheme. In addition to making deposits for fictitious earnings, users may be misled into disclosing personal identifying information and/or financial information, which may, in turn, be used to commit further acts of fraud. As a result, the Complainant submits that the Respondent has not used the disputed domain name in connection with any genuine business offering, but rather has attempted to create confusion with the Complainant in an attempt to mislead Internet users.

The Complainant submits that its COVANTA trade mark is inherently distinctive and well known in connection with the Complainant’s industrial waste management services. As the Complainant’s COVANTA trade mark has been continuously and extensively used for over 20 years and as all of the primary search results obtained by typing the term “covanta” into Google’s search engine refer to the Complainant, the Complainant says that the Respondent could not credibly argue that it did not have knowledge of the Complainant and its rights in the COVANTA trade mark when it registered the disputed domain name in September 2023, some 15 years after the Complainant’s registration of its COVANTA trade mark. In fact, the Complainant infers from the Respondent’s use of the disputed domain name in connection with a mobile app that makes use of images misappropriated from the Complainant’s official website, that the Respondent had actual knowledge of the Complainant and its COVANTA trade mark at the time of registering the disputed domain name and that it knowingly proceeded to register the disputed domain name which carries with it a risk of implied affiliation with the Complainant in order to mislead Internet users in bad faith.

The Complainant infers that the Respondent’s use of the disputed domain name is fraudulent in nature and that the Respondent has used the disputed domain name and accompanying mobile app as part of what appears to be a fraudulent advance-fee scheme purporting to provide “earnings” to mobile app users, making use of the Complainant’s name, trade mark, images, and branding. It notes that reports from users of the mobile app state that deposits made via the mobile app cannot be withdrawn and says that the presence of the COVANTA trade mark in the disputed domain name and use of it in the associated mobile app may cause unsuspecting Internet users to be falsely misled into believing that they are dealing with the Complainant. This says the Complainant is per se illegal activity which is considered evidence of bad faith (see [WIPO Overview 3.0](#) section 3.1.4) and also fulfills the requirements of paragraph 4(b)(iv) of the Policy and is therefore evidence of registration and use in bad faith.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

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 trade mark 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 the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of another term, namely “lab” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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.

The Complainant has submitted that the Respondent has no rights or legitimate interests in the disputed domain name. In particular it has submitted that the Respondent has not received any licence or other authorisation of any kind to make use of the Complainant’s trade mark in a domain name or otherwise and that the Respondent cannot assert that prior to any notice of this dispute it was using, or had made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. It has also submitted that the Respondent is not commonly known by the disputed domain name as the Respondent’s name bears no resemblance to the disputed domain name and there is nothing to indicate that the Respondent has obtained any registered trade mark rights for COVANTA. Neither says the Complainant is there any evidence that the Respondent has made a legitimate noncommercial or fair use of the disputed domain name.

The Complainant has also submitted that the disputed domain name is being used in connection with a so-called “Covanta Lab” app that purports to allow users to generate earnings by making deposits, with the possibility of withdrawing larger amounts at a later date. It has asserted that the mobile app features images that have been misappropriated from the Complainant’s official website and that in order to make deposits, Internet users are required to provide their bank details. It has also submitted that Internet users have subsequently reported that the mobile app does not allow for withdrawal of their deposits. The use of a domain name for illegal activity can never confer rights or legitimate interests upon a respondent. [WIPO Overview 3.0](#), section 2.13. Further the Respondent appears to have submitted false contact information.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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.

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 COVANTA trade mark is inherently distinctive and well known in connection with the Complainant's industrial waste management services. As the Complainant's COVANTA trade mark has been continuously and extensively used for over 20 years and as all of the primary search results obtained by typing the term "covanta" into Google's search engine refer to the Complainant, it is most likely that the Respondent was well aware of the Complainant and its rights in the COVANTA trade mark when it registered the disputed domain name in September 2023, some 15 years after the Complainant's registration of its COVANTA trade mark. It is further apparent from the Respondent's use of the disputed domain name in connection with a mobile app which features certain images from the Complainant's official website, that the Respondent had actual knowledge of the Complainant and its COVANTA trade mark at the time of registering the disputed domain name and that it registered the disputed domain name knowingly and in bad faith.

In this case the Respondent is using the disputed domain name to attract Internet users to the website at the disputed domain name in conjunction with an app which makes use of the Complainant's name, trade mark, images, and branding in order to attract mobile app users and purportedly to provide "earnings" to them from their deposits. It also appears that the website to which the disputed domain name resolves seeks that they enter their personal information into the website. There is evidence on the record that numerous Internet users who have entered their information and used the mobile app to make deposits cannot withdraw their money. It therefore appears that the website to which the disputed domain name resolves together with the app is being used in furtherance of a scam which amounts to the Respondent using the disputed domain name for fraudulent and illegal purposes. The Respondent has failed to explain this conduct and there is no evidence that he has responded to the various Internet users who have been unable to withdraw money as a result. The Respondent's use of what is obviously false contact information only reinforces the Panel's view of his bad faith.

Panels have held that the use of a domain name for illegal activity here, claimed as fraudulently procuring Internet users' funds or personal information, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the 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 the 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 <covantalab.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: January 3, 2024