

ADMINISTRATIVE PANEL DECISION

Carrier Corporation v. Vivek Anil George, PMG GROUP
Case No. D2023-4614

1. The Parties

The Complainant is Carrier Corporation, United States of America, represented by Saba & Co. Intellectual Property s.a.l. (Offshore), Lebanon.

The Respondent is Vivek Anil George, PMG GROUP, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <carrierscrewcompressors.com> (the “Disputed 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 November 7, 2023. On November 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 8, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 14, 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 14, 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 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 15, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on December 22, 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, Carrier Corporation, is an American company operating in heating, air-conditioning and refrigeration solutions.

The Complainant is the owner of numerous trademarks including the following:

- CARRIER, United Arab Emirates word mark registered under No. 060438 on May 16, 2006 in class 11;
- The United Arab Emirates figurative mark depicted below, registered under No. 004771 on June 1, 1996 in class 11:



The Complainant is the owner of the domain name <carrier.com>.

The Respondent registered the Disputed Domain Name on September 11, 2018. The Panel observes that the Disputed Domain Name currently resolves to a website presenting a company named Carrier Compressors as a HVAC/R (heating, ventilation, air conditioning and refrigeration) company, "*involved in the HVAC/R of residential buildings, commercial offices, explicit villas*" and operating in the Emirates of Dubai and Sharjah. The website also displays different types of reciprocating and screw compressors. Additionally, on the bottom of the website linked to the Disputed Domain Name, the following disclaimer is displayed: "The names and part numbers referenced herein are trademarks for Carrier company. Part numbers, images and logo of this organization is used for cross reference and interchange purposes only" (hereafter "the Disclaimer").

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.

Notably, the Complainant contends that the Disputed Domain Name is confusingly similar to a trademark in which it claims to have rights. According to the Complainant, the addition of "screw compressors" is not relevant and will not have any impact on the overall impression of the dominant part of the name, CARRIER, instantly recognizable as a world-famous trademark.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. To the best of the Complainant's knowledge, the Respondent is not commonly known by the Disputed Domain Name; has not used of, or made demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; is not making a legitimate and noncommercial or fair use of the Disputed Domain Name (or explicable reason as to why the Respondent chose the Disputed Domain Name) without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark CARRIER at issue. Moreover, the Complainant claims that the Respondent has not received any authorization to use the Complainant's CARRIER name and mark.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, given the fact that the Complainant had already registered its mark in the United Arab Emirates, it is very likely that the Respondent must have been aware of the Complainant's mark and products at the time of registering the Disputed Domain Name. The Complainant also claims that use of the CARRIER mark in the Disputed Domain Name and on the website linked to it creates a likelihood of confusion among the consumers and misleads them about a (in fact non-existing) business relationship between the Respondent and the Complainant.

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

The Panel observes that the entirety of the mark is reproduced within the Disputed Domain Name. In such cases, the domain name will normally be considered confusingly similar to the incorporated mark for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

Additionally, the Panel finds that the addition of other terms – here, “screw” and “compressors” – 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.

It is well established that generic Top-Level-Domains (“gTLDs”), here “.com”, may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

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.

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.

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Vivek Anil George, PMG GROUP". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name incorporates the Complainant's CARRIER trademark in its entirety and merely adds the descriptive terms "screw" and "compressors". Although the Complainant does not mention this in its Complaint, a quick search enabled the Panel to confirm that the Complainant manufactures and sells screw compressors. Therefore, the Panel finds that the Disputed Domain Name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), sections 2.5.2 and 2.5.3.

The Disputed Domain Name refers to a website displaying the Complainant's CARRIER word mark and appearing to offer similar products and services (e.g., compressors and HVAC/R solutions) as the Complainant. In the Panel's view, this does not amount to a legitimate noncommercial or fair use of the Disputed Domain Name.

Moreover, the Respondent does not accurately and prominently disclose its relationship with the Complainant. The Panel finds that the Disclaimer mentioned in small characters at the bottom of the website linked to the Disputed Domain Name is insufficiently clear and prominent. As a result, the Respondent fails the so called "Oki Data test" for legitimate resellers, distributors or service providers of a complainant's goods or services. [WIPO Overview 3.0](#), section 2.8.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

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.

In the present case, the Panel notes that the Disputed Domain Name appears to resolve to a website offering products and services similar to or even competing with products and services linked to the Complainant's trademarks. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark (see *Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan*, WIPO Case No. [D2014-2227](#)).

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.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name as:

- the Complainant's United Arab Emirates word mark predates the registration of the Disputed Domain Name by more than 12 years;
- the Panel finds that the Complainant's CARRIER trademark is distinctive and well-known;
- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use.

So far as the Disclaimer is concerned, the Panel does not consider this assists the Respondent. This issue is discussed in [WIPO Overview 3.0](#) at section 3.7: "How does a disclaimer on the webpage to which a disputed domain name resolves impact a panel's assessment of bad faith?"

"In cases where the respondent appears to otherwise have a right or legitimate interest in a disputed domain name, a clear and sufficiently prominent disclaimer would lend support to circumstances suggesting its good faith. For example, where a respondent is legitimately providing goods or services related to the complainant's mark only (see Oki Data and its progeny discussed at 2.8), the presence of a clear and sufficiently prominent disclaimer can support a finding that the respondent has undertaken reasonable steps to avoid unfairly passing itself off as related to the complainant, or to otherwise confuse users. On the other hand, where the overall circumstances of a case point to the respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith. In such cases, panels may consider the respondent's use of a disclaimer as an admission by the respondent that users may be confused."

The Panel remains of the view that the Disputed Domain Name is by its very nature likely to attract users who believe they are seeking an official or authorised site operated by or with the permission of the Complainant. The Disclaimer seems to the Panel to be an attempt to dispel confusion which arose because of the nature of the Disputed Domain Name. It does not alter the Panel's analysis.

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 <carrierscrewcompressors.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/
Flip Jan Claude Petillion
Sole Panelist
Date: January 5, 2024