

## **ADMINISTRATIVE PANEL DECISION**

Wilshire Refrigeration & Appliance, Inc. v. Daniil Kliuiev  
Case No. D2023-4815

### **1. The Parties**

The Complainant is Wilshire Refrigeration & Appliance, Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Daniil Kliuiev, Ukraine.

### **2. The Domain Names and Registrar**

The disputed domain names <realwilshirerefrigerations.com>, <wilshireapplianceandrefrigeration.com>, <wilshireappliance.support> are registered with Squarespace Domains II LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 20, 2023. The Complaint was originally filed against five domain names registered by three different respondents. On November 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 21, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 6, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaint for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on December 11, 2023, withdrawing two domain names from the proceeding and indicating that only the disputed domain names were part of this proceeding.

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 December 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 11, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on January 22, 2024. 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. Further Procedural Considerations**

Under paragraph 10(b) and 10(c) of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's postal address is stated to be in Ukraine (whether or not this is indeed accurate), which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the Center has successfully sent the written notice of the Complaint to the privacy service named in the Whois records for the disputed domain names and has sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar. There is no evidence that the case notification email to this email address was not successfully delivered.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of a formal Response) that the Respondent registered and has used the disputed domain names in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark.

On this basis, the Panel concludes that the Parties have been given a fair opportunity to present their cases, and proceeds to issue the present decision on the substance of the dispute.

#### **5. Factual Background**

The Complainant is a corporation incorporated in California, United States. It is a service provider for luxury domestic appliances, and states that it is the only provider of factory-trained service operatives for Wolf and Sub-Zero products in certain regions of Southern California and Nevada.

The Complainant claims common law (*i.e.* unregistered) trademark rights in the mark WILSHIRE REFRIGERATION & APPLIANCE as further discussed below.

The Complainant operates a website at "www.wilshirerefrigeration.com", the relevant domain name having been registered on May 31, 2001.

The disputed domain names were registered on the following dates:

- <realwilshirerefrigerations.com> on April 14, 2022
- <wilshireapplianceandrefrigeration.com> on June 22, 2023
- <wilshireappliance.support> on July 17, 2023

All of the disputed domain names have resolved to websites offering appliance repair services and mentioning Sub-Zero products in particular. Two of those websites refer to services in similar geographical areas to those in which the Complainant operates.

## **6. Parties' Contentions**

### **A. Complainant**

The Complainant submits that it was founded in 1974 and has been incorporated since 2006. It states that it has used the mark WILSHIRE REFRIGERATION & APPLIANCE since 2001 and produces evidence by way of documentation and photographs of its use of that trademark in commerce. The Complainant states that it employs 42 individuals, operates 25 service trucks and provides approximately 30,000 service calls per year to approximately 150,000 customers.

The Complainant claims, as a result of the above matters, to have obtained common law trademark rights in the mark WILSHIRE REFRIGERATION & APPLIANCE. It submits that its widespread and continuous use of the mark in commerce since 1974 has resulted in the mark becoming a distinctive identifier that consumers associate with its services. It submits further that it has already been found to have common law trademark rights for the purposes of the Policy in the case of *Wilshire Refrigeration & Appliance, Inc. v. Henry Wasserman*, WIPO Case No. [D2023-2541](#).

The Complainant submits that the disputed domain names are confusingly similar to its WILSHIRE REFRIGERATION & APPLIANCE trademark. It contends that each of the disputed domain names includes a combination of the dominant elements of that trademark and that the trademark is therefore recognizable in each of the disputed domain names.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. It states that it has never licensed or authorized the Respondent to use its WILSHIRE REFRIGERATION & APPLIANCE trademark, that the Respondent has not commonly been known by any of the disputed domain names and that the Respondent is using the disputed domain names for the purpose of causing confusion with the Complainant's trademark and services. The Complainant contends that the Respondent's websites appear to be associated with the Complainant's business and that they have caused actual confusion to the Complainant's customers. It produces evidence of actual confusion in this regard, including records of queries and complaints from customers who had contacted the Respondent's businesses believing them to be the Complainant's. The Complainant submits that the Respondent cannot have obtained rights or legitimate interests in the disputed domain names in circumstances where it has set out to cause confusion with the Complainant's trademark for commercial gain.

The Complainant submits that the disputed domain names have been registered and are being used in bad faith. It states that, by using the disputed domain names for its websites, the Respondent is impersonating the Complainant and seeking to intercept its business. The Complainant contends that the disputed domain names are so obviously connected with the Complainant that the Respondent must have been aware of the Complainant's trademark when it registered the disputed domain names and has acted with 'opportunistic bad faith'. The Complainant further submits that it is not possible to conceive of any legitimate use that the Respondent could make of the disputed domain names. It also contends that the Respondent has registered three disputed domain names with the same likely intent, which evidences a pattern of abusive registrations.

The Complainant requests the transfer of the disputed domain names.

### **B. Respondent**

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

## 7. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are 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 Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

### A. Identical or Confusingly Similar

In this case, the Complainant relies on common law trademark rights. To establish such rights, the Complainant must show that it has used the mark in question in commerce to the extent that it has become a distinctive identifier of the Complainant's services, namely, that it is recognized by the public as signifying the Complainant's services to the exclusion of those of other relevant providers.

The trademark claimed by the Complainant, WILSHIRE REFRIGERATION & APPLIANCE, comprises three specific elements. The term "wilshire" is a surname which, while perhaps uncommon, is not exclusively used by the Complainant. The terms "refrigeration" and "appliance" are dictionary words in common usage. These matters notwithstanding, the Panel finds that the Complainant has obtained a level of common law trademark rights in the mark WILSHIRE REFRIGERATION & APPLIANCE, being a distinctive combination of the three relevant terms. Such finding is based on the Complainant's evidence of its use of that mark in commerce in a particular geographical region for a period of several decades, and of actual confusion caused by the third-party use of similar names.

Furthermore, as discussed in section 1.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)):

"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."

The Panel find such targeting to have occurred in this case, as further discussed below.

The Panel finds in the circumstances that the Complainant has obtained common law trademark rights in the mark WILSHIRE REFRIGERATION & APPLIANCE for the purposes of the Policy.

The disputed domain name <realwilshirerefrigerations.com> adopts the terms "wilshire" and "refrigeration" as found in the Complainant's common law trademark WILSHIRE REFRIGERATION & APPLIANCE. The disputed domain name <wilshireappliance.support> adopts the terms "wilshire" and "appliance". The disputed domain name <wilshireapplianceandrefrigeration.com> adopts all three of the relevant elements. The Panel therefore finds the Complainant's trademark to be recognizable in each of the disputed domain names, and that all of the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

### B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain names, or evidence of rights or legitimate interests on its part in the disputed domain names, whether in the circumstances contemplated by paragraph 4(c) of the Policy or

otherwise. Furthermore, for the reasons set out below, the Panel finds the Respondent to have registered and used the disputed domain names to target the Complainant's trademark WILSHIRE REFRIGERATION & APPLIANCE, which cannot give rise to rights or legitimate interests on the part of the Respondent. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

### **C. Registered and Used in Bad Faith**

The Complainant has established that it has obtained common law trademark rights in the mark WILSHIRE REFRIGERATION & APPLIANCE by virtue of its longstanding use of that mark to offer luxury domestic appliance servicing in a particular geographical region. The Respondent has registered three disputed domain names, two of which adopt two elements of the Complainant's trademark and one of which, <wilshireapplianceandrefrigeration.com>, adopts all three elements. The Respondent has used the disputed domain names for the purpose of websites offering similar domestic appliance services to those of the Complainant in a similar geographical region.

In the circumstance set out above, and in the absence of any explanation from the Respondent for its choice of the disputed domain names, the Panel finds the inference to be inescapable that the Respondent registered the disputed domain names in the knowledge of the Complainant's trademark and with the intention of taking unfair advantage of the Complainant's commercial goodwill attaching to that trademark. Furthermore, the Respondent has used the disputed domain names for the purposes of websites which impersonate, or in any event cause obvious confusion with, the Complainant's trademark and services.

The Panel finds therefore that, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its websites or of a product or service on its websites (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain names have been registered and are being used in bad faith.

### **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, <realwilshirerefrigerations.com>, <wilshireapplianceandrefrigeration.com> and <wilshireappliance.support> be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: February 2, 2024