

ADMINISTRATIVE PANEL DECISION

Greencarrier AB v. Richard Fagge
Case No. D2024-0209

1. The Parties

The Complainant is Greencarrier AB, Sweden, represented by Abion AB, Sweden.

The Respondent is Richard Fagge, United States of America (the “United States”).

2. The Domain Names and Registrar

The disputed domain name <greencarrierservices.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 18, 2024. On January 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 19, 2024, 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 (Not available from registry) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 22, 2024, 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 amendment to the Complaint on January 22, 2024.

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 the Respondent of the Complaint, and the proceedings commenced on January 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 14, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on February 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. Factual Background

The Complainant, is a company incorporated in Stockholm, Sweden which operates within the logistics and transportation sector worldwide.

The Complainant owns 19 valid worldwide trademark registrations for the GREENCARRIER trademark, such as the following:

- the United States trademark registration number 3468129 for GREENCARRIER (word), filed on January 24, 2007, and registered on July 15, 2008, claiming services in International classes 38, 39 and 42; and
- the European Union trademark registration number 005503974 for GREENCARRIER (word), filed on November 17, 2006, and registered on December 10, 2007, claiming services in International classes 36 and 39.

The Complainant owns and uses the domain name <greencarrier.com> registered on September 8, 2000.

The disputed domain name was registered on September 6, 2023, and, at the time of the Decision, it resolves to an error page.

According to Annex 7 to the Complaint, on November 18, 2023, the disputed domain name was directed to a commercial website, where consumers were offered services identical to the Complainant's services under the name "Greencarrier Freight Services".

On November 16, 2023, the Complainant send a cease-and-desist letter to the Respondent through the Registrar, putting the Respondent on notice of the Complainant's trademark rights, and requesting the transfer of the disputed domain name to it. No response was received.

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 its trademark as it incorporates the trademark GREENCARRIER with the additional term "services", which, when seen in the context of the Complainant's business, can only be interpreted as an attempt to mislead consumers into thinking that the disputed domain name derives from the Complainant; the Respondent has no rights or legitimate interests in the disputed domain name; the Respondent registered and is using the disputed domain name in bad faith to direct Internet users to a commercial website, which, as of November 18, 2023 was used in relation to identical services to those provided by the Complainant; the Respondent did not react to the Complainant's cease-and-desist letter; the Complainant has been well exposed under the trademark, both through its marketing channels, its official website, as well as through affiliate partners and therefore it is obvious that the Respondent was well aware of the Complainant and its trademark when registering the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain name is 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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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.

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 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 other terms (here, "services") 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.

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.

According to the evidence provided in the Complaint, the Respondent has used the disputed domain name in connection with a website promoting and offering for sale services identical to those of the Complainant.

Further, the composition of the disputed domain name which combines the Complainant's trademark with a term referring to the Complainant's activity or otherwise, suggests an affiliation with the Complainant. 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.

Where a trademark bears descriptive qualities, a domain name comprised of that trademark plus a term such as “services” here, may also conceivably be used by third parties. In the present case however, the Complainant has been in the logistics sector over a decade and is moreover using the domain name <greencarrier.com> since 2000; without the help of a Response, these factors lead to the interference that the Respondent’s intention was likely to draw traffic based on the Complainant’s trademark.

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 Respondent has not provided any explanation why it has registered the disputed domain name. Considering the findings under the second element and also the fact that the website connected to the disputed domain name became inactive, seemingly after the Complainant’s cease and desist letter, the Panel finds it more likely than not that the Respondent has registered the disputed domain name in bad faith, with knowledge of the Complainant and its trademark.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt “to attract, for commercial gain, Internet users to [the respondent’s] 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” is evidence of registration and use in bad faith.

At the time of the Decision, the disputed domain name resolves to an error page.

The Panel finds that the non-use of the disputed domain name would not prevent a finding of bad faith under the doctrine of passive holding.

The Panel finds the third element of the Policy has been established.

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 <greencarrierservices.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: March 7, 2024