

ADMINISTRATIVE PANEL DECISION

HomeServe USA Corp. v. Krystal Kamrajba
Case No. D2024-0292

1. The Parties

The Complainant is HomeServe USA Corp., United States of America (“United States”), represented by Frankfurt Kurnit Klein & Selz, PC, United States.

The Respondent is Krystal Kamrajba, Poland.

2. The Domain Name and Registrar

The disputed domain name <homeserveamerica.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 23, 2024. On January 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 25, 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 amended Complaint on January 25, 2024.

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 January 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 20, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on February 23, 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 an administrator of home repair protection plans and has been serving customers in North America since 2003, administering more than 8.7 million home repair plans in North America for nearly 5 million homeowners. Plans from the Complainant include coverage for plumbing, heating, ventilation, and air conditioning (“HVAC”), and home appliances.

The Complainant has provided evidence of ownership of the following trademark registrations, as per trademark registration certificates submitted as exhibit D to the Complaint:

- United States trademark registration No. 4139654 for HOMESERVE (word mark), filed on June 8, 2010, and registered on May 8, 2012, in international class 37;
- United States trademark registration No. 4056379 for HOMESERVE (word mark), filed on April 18, 2011, and registered on November 15, 2011, in international class 36;
- United States trademark registration No. 4139656 for HOMESERVE USA (word mark), filed on June 8, 2010, and registered on May 8, 2012, in international class 37.

The Complainant is also the owner of the domain names <homeserve.com>, registered on September 24, 2008, and <homeserveusa.com>, registered on March 2, 2005, both used by the Complainant to promote its services under the trademark HOMESERVE.

The disputed domain name was registered on September 21, 2023, and is not pointed to an active website.

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 the trademark HOMESERVE in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the term “America” and the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant emphasizes that the term “America” has the same meaning as “usa” (referring to the United States of America) which is used in the Complainant’s domain name <homeserveusa.com>, and that the use of such term is thus increasing the likelihood of confusion as to the origin of the services.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that considering i) the Respondent registered the disputed domain name long after the Complainant obtained rights in the HOMESERVE mark; ii) HOMESERVE is an arbitrary term with no meaning if not that associated to the Complainant’s services; iii) the Respondent is not a licensee of the Complainant, nor has it been authorized by the Complainant to use its mark in any way; iv) the Respondent is not commonly known by the disputed domain name; and v) the disputed domain name is being held passively and is therefore not being used in connection with a bona fide offering of goods or services, the Respondent lacks rights or legitimate interests in the disputed domain name.

With reference to the circumstances evidencing bad faith, the Complainant indicates that i) the Respondent registered the disputed domain name with the intent to profit and exploit the Complainant's goodwill and notoriety; ii) the Respondent failed to reply to the Complainant's cease -and-desist letter dated October 12, 2023; iii) in view of the composition of the disputed domain name, encompassing the Complainant's mark with the term "America", and considering searches for "Homeserve America" return the Complainant's domain name <homeserveusa.com> as the first non-sponsored, organic result on "www.google.com", the Respondent most likely knew about the Complainant at the time of registering the disputed domain name, nevertheless it chose to register the disputed domain name to capitalize on consumer recognition of the mark.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that 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. Indeed, the Complainant has provided evidence of ownership of valid trademark registrations for HOMESERVE (exhibit D to the Complaint).

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 the term "America" 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.

Therefore, 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 there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademarks. Moreover, there is no element from which the Panel could infer the Respondent’s rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

Furthermore, according to the record, there is no evidence that the Respondent may have used the disputed domain name, currently resolving to an inactive website, in connection with a bona fide offering of goods or services of a legitimate noncommercial or fair use without intention to misleadingly divert the consumers or to tarnish the Complainant’s trademarks.

In addition, the disputed domain name, combining the Complainant’s HOMESERVE mark with the term “America”, which refers to the country where the Complainant is based, is inherently misleading. The disputed domain name is also very similar to the Complainant’s domain name <homeserveusa.com>. As stated in section 2.5.1 of the [WIPO Overview 3.0](#), “Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), 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”.

Therefore, 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 finds that, in light of i) the prior registration and use of the Complainant’s trademark HOMESERVE in connection with the Complainant’s services, including online via the Complainant’s website “www.homeserve.com”, ii) the distinctiveness of the HOMESERVE mark, which is well-known in its sector and iii) the composition of the disputed domain name, combining the HOMESERVE mark with the term “America” referable to the Complainant’s country, the Respondent very likely registered the disputed domain name having the Complainant’s trademark in mind.

As indicated above, the disputed domain name does not resolve to an active website. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, the composition of the disputed domain name and the Respondent's failure to respond to the Complainant's cease-and-desist letter and to the Complaint and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Therefore, 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 <homeserveamerica.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: March 8, 2024