

ADMINISTRATIVE PANEL DECISION

Wastequip, LLC v. Lendy Gomez

Case No. D2024-0591

1. The Parties

The Complainant is Wastequip, LLC, United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, LLP, United States.

The Respondent is Lendy Gomez, United States.

2. The Domain Name and Registrar

The disputed domain name <toterecycling.com> 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 February 8, 2024. On February 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 9, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 12, 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 amended Complaint on February 13, 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 February 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on March 12, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on March 15, 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, founded in 1989, manufactures and services waste handling equipment in the United States and internationally. It manufactures two-wheeled carts for curbside trash and recycling collection under the TOTER mark, for which it has registered, inter alia, United States Trademark Registration No. 1426599 for TOTER (word mark), registered on January 27, 1987, for goods in classes 20 and 21, claiming a date of first use in 1962.

The disputed domain name was registered on December 12, 2023. It resolves to a parking page featuring pay-per-click (“PPC”) links.

The record reflects that the Complainant sent a cease-and-desist email to the Respondent on December 27, 2023. The record does not contain the Respondent’s response thereto.

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 its TOTER brand was launched in the 1960s, when the company began marketing an automated cart system for curbside garbage collection. Since then, the TOTER brand has expanded to include a variety of carts and containers for garbage and recycling. The disputed domain name is formed by telescoping “toter” and “recycling”. It resolves to a website featuring PPC links for such categories as “Trash Removal” and “Waste Removal,” which are directly related to the Complainant’s business. The Complainant has not authorized the Respondent to use the TOTER mark in any manner.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name in bad faith.

Under 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”.

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 Complainant's TOTER 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, "ecycling") 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.

The Panel notes that the disputed domain name, which reflects the Complainant's TOTER trademark, resolves to a site featuring PPC links related to the Complainant's business. Such use does not establish rights or legitimate interests in these circumstances. [WIPO Overview 3.0](#), section 2.9. Moreover, the Panel notes that the disputed domain name telescopes the Complainant's TOTER mark and the term "recycling" (directly related to the Complainant's business) by omitting a letter "r", and that there is a risk that Internet users will not notice the subtle difference. The Panel therefore finds that the composition of the disputed domain name carries a risk of implied affiliation to the Complainant that cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Considering the above, the Panel is unable to find that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. The evidence does not indicate that the Respondent is commonly known by the disputed domain name nor that the Respondent is making legitimate noncommercial or fair use of it.

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 disputed domain name resolves to a website featuring PPC links related to the Complainant's business. The Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his or her website by creating a likelihood of confusion with the Complainant's mark. The disputed domain name was registered more than 30 years after the Complainant registered its TOTER trademark. The disputed domain name differs from this mark only by telescoping it with the term "recycling" which refers to the Complainant's business and therefore implies a connection to the Complainant. Under these circumstances, the Panel finds that the disputed domain name was registered and is being used in bad faith. [WIPO Overview 3.0](#), section 3.1.

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 <toterecycling.com> be transferred to the Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: March 31, 2024