

ADMINISTRATIVE PANEL DECISION

Wilshire Refrigeration & Appliance, Inc. v. Oleksandr Kliuiev, Henryslist.com
Case No. D2024-0962

1. The Parties

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

The Respondent is Oleksandr Kliuiev, Henryslist.com, Ukraine.

2. The Domain Names and Registrar

The disputed domain names <officialwilshirerefrigeration.com> and <wilshireappliance.repair> (each a “Disputed Domain Name” and together the “Disputed Domain Names”) are registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 5, 2024. On March 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On March 6, 2024, 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 (DATA REDACTED; a/k/a 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 March 7, 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 March 9, 2024.¹

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 March 12, 2024. In accordance with the Rules, paragraph

¹The Complainant removed two domain names from the proceeding upon receipt of the Center’s email of multiple underlying registrants.

5, the due date for Response was April 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 2, 2024.

The Center appointed Nick J. Gardner as the sole panelist in this matter on April 8, 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 California (US) corporation. Its predecessor was formed in 1974 and it was incorporated in 2006. The Complainant is a family owned and operated company that provides factory-trained service providers for luxury appliance manufacturers. It provides approximately 30,000 service calls per year and has served approximately 150,000 customers. It employs 42 people and operates 25 service trucks. The Complainant (or its predecessor business) has since 2001 promoted its business via its website which is linked to the domain name <wilshirerefrigeration.com>. The Complainant has used the term "Wilshire Refrigeration & Appliance" (which is in substance its name) on its website and on advertisements, brochures, business cards, door hangers, letterhead, postcards, invoices, certifications, employee uniforms, trucks, and on its freestanding office building. It has done so extensively throughout the time it has been in business.

The Disputed Domain Names were both registered on February 6, 2024. They each resolve to a website (the "Respondent's Website") which purports to be that of the Complainant and which offers appliance repair services to the public in California.

5. Parties' Contentions

A. Complainant

The Complainant says it has unregistered trademark rights in the term "Wilshire Refrigeration & Appliance". It says that the Disputed Domain Names are each confusingly similar to this trademark.

The Respondent has no rights or legitimate interests in the term "Wilshire Refrigeration" or "Wilshire Appliance".

In consequence the Complainant alleges that the Disputed Domain Names were each registered and are each being used in bad faith. The Complainant says the deceptive nature of the Respondent's Website is clear evidence of bad faith. It says the Respondent is masquerading as the Complainant in order to divert customers to the Respondent and produces evidence of such diversion occurring.

The Complainant also says the Respondent is a serial cybersquatter who has lost multiple proceedings under the Policy and other domain name dispute policies in cases filed by the Complainant and other trademark owners also engaged in the appliance repair business. It refers to *Wilshire Refrigeration & Appliance, Inc. v. Daniil Kliuiev*, WIPO Case No. [D2023-4815](#) (transfer of <realwilshirerefrigerations.com>, <wilshireapplianceandrefrigeration.com> and <wilshireappliance.support>), etc.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”.

Since the Respondent’s postal address is stated to be in Ukraine, 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 by registered post and the Notification of Complaint by email to the Respondent at its postal address and email address as registered with the Registrar. The records of the registered post indicate that the Written Notice was delivered to the Respondent. There is no evidence that the case notification email to this email address was not successfully delivered.

Further, the Respondent apparently registered the Disputed Domain Names as recently as February 2024 and thus would appear to be capable of controlling the disputed domain names and the related content and that, having apparently received notification of the Complaint by email, it would have been able to formulate and file a Response if it wished to do so.

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.

Lastly, the Complainant has selected as the mutual jurisdiction the courts at the location of the principal offices of the concerned Registrar, such courts not being subject to an international conflict and thus the Panel finds that proceeding with this Decision does not preempt the Respondent from asserting its rights under paragraph 4(k) of the Policy to submit this dispute to the courts at the applicable mutual jurisdiction.

Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

6.2 Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Names are identical with 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;
- (iii) the Disputed Domain Names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The filed evidence as to the Complainant’s claimed unregistered rights in WILSHIRE REFRIGERATION & APPLIANCE is in the opinion of the Panel more than sufficient to establish unregistered trademark rights in

that term. It has been used over many years by the Complainant as a source identifier for the services the Complainant provides (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) at section 1.3 in this regard).

In addition, were there any doubt about this, it is relevant that the Respondent himself thought it worthwhile to use the words “Wilshire Refrigeration and Wilshire Appliance” in the Disputed Domain Names. As the panel noted in *NEOVIA, Hi-Nutrients International Ltd. v. WhoisGuard Protected, WhoisGuard, Inc. / Deniz Hus*, WIPO Case No. [D2019-0600](#): “The Respondent did not provide arguments to the contrary; rather, in the Panel’s view, the Respondent cannot dispute that, given it deliberately targeted the source identifier in an apparent fraud attempt. Such targeting of the Complainants is sufficient to establish limited trademark rights in the HI-NUTRIENTS trademark for the purposes of the Policy. See *PEMF Supply, LLC v. Domain Administrator, See PrivacyGuardian.org / Gregory Lewis, American Healthcare Foundation*, WIPO Case No. [D2019-0235](#) ([...] in light of the use of the PEMF SUPPLY mark that was submitted in this proceeding, the targeting of Complainant by Respondent is sufficient to establish Complainant has limited unregistered trademark rights in the PEMF SUPPLY mark for the purposes of the Policy)”. See also *Greenspring Associates, Inc. v. Lisa Knowles, Victoria capital pty*, WIPO Case No. [D2019-0265](#): “To that extent, Complainant has in fact used the domain name <gspring.com> as a source identifier for its services. One person who cannot dispute that fact is Respondent, who (as is discussed below) deliberately targeted that source identifier (<gspring.com>) to attempt to perpetrate a fraud via confusion. The Domain Name differs from the GSPRING mark only to the extent that the Domain Name replaces the ‘i’ with an ‘l’. The visual similarity between the ‘i’ and the ‘l’ – especially when the font is small – is obvious”.

Accordingly, the Panel is satisfied on the evidence as filed that the Complainant has shown it has unregistered trademark rights in WILSHIRE REFRIGERATION & APPLIANCE as a source identifier for its services. The Panel will refer to the “WILSHIRE REFRIGERATION & APPLIANCE trademark” in the remainder of this decision in relation to such rights.

The Panel finds that each Disputed Domain Name is confusingly similar to the WILSHIRE REFRIGERATION & APPLIANCE trademark. They each include the word “wilshire” which is a distinctive part of the WILSHIRE REFRIGERATION & APPLIANCE trademark and then include one of the further terms from the trademark (either “refrigeration” or “appliance”).

It is well established that the Top-Level Domain (“TLD”), in this case “.com” or “.repair”, is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#) at section 1.11.

Accordingly, the Panel finds that the Disputed Domain Names are each confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Names or to use the WILSHIRE REFRIGERATION & APPLIANCE trademark. The Complainant has prior rights in the WILSHIRE REFRIGERATION & APPLIANCE trademark which precede the Respondent's registration of the Disputed Domain Names. The Complainant has therefore established a prima facie case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Names and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Names (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel also considers that given the use of the Disputed Domain Names to impersonate the Complainant, such use can never confer rights or legitimate interests upon the Respondent. [WIPO Overview 3.0](#), section 2.13.

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Names. Accordingly the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Names and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances the fact that the Disputed Domain Names were linked to the Respondent's Websites which purport to be the Complainant's own websites leads the Panel to conclude the registration and use were in bad faith.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises ("you" or "your" refers to a respondent under the Policy):

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

In the present circumstances the Panel agrees with the Complainant that the Respondent was seeking to achieve commercial gain by impersonating the Complainant and hence diverting customers from the Complainant to the Respondent. It was using the Disputed Domain Names as part of that impersonation. That amounts to registration and use in bad faith. The Panel also notes that the Respondent has not filed a Response and hence has not availed himself of the opportunity to present any case of good faith that he might have. The Panel infers that none exists. Further the Panel agrees with the Complainant that the Respondent would appear to be engaged in a pattern of bad faith registrations targeting the Complainant, considering the identical respondent surname cited in *Wilshire Refrigeration & Appliance, Inc. v. Daniil Kliuiev*, WIPO Case No. [D2023-4815](#), which also involved a series of domain names similarly constructed as here and offering identical services as those of the Complainant. That is further evidence of registration and

use in bad faith.

Accordingly, the Panel finds that each of the Disputed Domain Names has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 Names <officialwilshirerefrigeration.com> and <wilshireappliance.repair> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: April 22, 2024