

## ADMINISTRATIVE PANEL DECISION

The Middleby Corporation v. Pamela Barbey, Name Redacted  
Case No. D2024-1429

### 1. The Parties

The Complainant is The Middleby Corporation, United States of America ("United States"), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Pamela Barbey, Name Redacted<sup>1</sup>.

### 2. The Domain Name and Registrar

The disputed domain name <middleby.com> is registered with Hostinger Operations, UAB (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 4, 2024. On April 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 2024, a registrar using the same service platform 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)), and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 2024, providing the registrant and contact information disclosed by this registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 16, 2024.

On April 30, 2024, the Registrar transmitted by email to the Center its verification response confirming "Pamela Barbey, Name Redacted" is the registrant for the disputed domain name and providing contact information. On May 1, 2024, the Center sent another email communication to the Complainant, providing

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<sup>1</sup> The Respondent appears to have used the company name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent's organization name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent's organization name. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

the registrant and contact information disclosed by the Registrar. On May 2, 2024, the Complainant confirmed that the Center should proceed with notification of the Complaint.

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 May 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2024. On May 9 and 28, 2024, a third party identified in the contact information provided by the Registrar contacted the Center via email to “den[y] and reject[] any claims or allegation concerning the use of ‘middlleby’ or ‘middleby’” and indicated that they are not the registrant of the disputed domain name. Pursuant to paragraph 6 of the Rules, on May 27, 2024, the Center informed the Parties that it would proceed with the panel appointment process.

The Center appointed Evan D. Brown as the sole panelist in this matter on May 31, 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 in the business of providing commercial foodservice solutions, residential appliances and industrial processing and baking systems. The Complainant, either directly or through its operating subsidiary, Middleby Marshall Inc., owns the mark MIDDLEBY for which it enjoys the benefits of registration in a number of jurisdictions around the world, e.g., International Registration No. 1600332, registered on February 5, 2021. The Complainant maintains its Internet presence, predominantly through its primary website linked to the domain name <middleby.com>, which contains information about its range of brands and products.

According to the Whois information, the disputed domain name was registered on October 10, 2023. The disputed domain name redirects Internet users to an error page. But the Complainant asserts, and has provided evidence that shows, that the Respondent has used the disputed domain name to facilitate email phishing attacks, targeting potential customers. Specifically, the information the Complainant has provided shows that the Respondent used the disputed domain name to send out email communications purporting to originate from a person associated with the Complainant, to obtain sensitive personal information while offering false business deals.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

The Respondent did not file a response to the Complaint.

As noted above, a third party identified in the contact information provided by the Registrar contacted the Center on May 9, 2024 via email to “den[y] and reject[] any claims or allegation concerning the use of ‘middlleby’ or ‘middleby’”. This third party wrote to the Center again “to confirm that [the entity] is not the

registrant of the disputed domain name <middleby.com> and that [it does] not have any relationship to the registrant of the disputed domain name.”

## 6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 respect of the disputed domain name, and (iii) the disputed domain name has been registered and is being used in bad faith. The Panel finds that all three of these elements have been met in this case.

### A. Identical or Confusingly Similar

This first element functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. 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. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the MIDDLEBY mark by providing evidence of its trademark registrations.

The disputed domain name is a minor misspelling of the Complainant’s MIDDLEBY mark. UDRP panels have consistently held that “[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.” [WIPO Overview 3.0](#), section 1.9. Such insignificant modifications to trademarks are commonly referred to as “typo-squatting”. *Six Continents Hotels, Inc. v. null John Zuccarini d/b/a Country Walk*, WIPO Case No. [D2003-0161](#). “Domain names which constitute typo-squatting are confusingly similar by definition; it is this similarity which makes them attractive.” *Dell Computer Corporation. v. Clinical Evaluations*, WIPO Case No. [D2002-0423](#); see also *American Home Products Corporation v. Privateer Ltd.*, WIPO Case No. [D2000-0455](#) (the domain name <addvil.com> was held to be confusingly similar to ADVIL). The Panel finds that the disputed domain name is confusingly similar to the Complainant’s mark.

Accordingly, the Panel finds that the Complainant has established this first element under the Policy.

### B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a prima facie showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts that (1) the Respondent is not sponsored by or affiliated with the Complainant in any way, (2) the Complainant has not given the Respondent permission or any license to use the Complainant’s trademarks in any manner, including in domain names, and (3) the Respondent is not commonly known by the disputed domain name. Moreover, the Complainant provided uncontroverted evidence that the Respondent used the disputed domain name to send email communications purporting to come from someone employed by the Complainant, apparently with the intention to obtain sensitive personal information while offering false business deals.

The Panel finds that the Complainant has made the required prima facie showing. Such showing is bolstered by the evidence of the Respondent's email phishing efforts. The Respondent has not presented evidence to overcome this prima facie showing. And nothing in the record otherwise tilts the balance in the Respondent's favor.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

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

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other on-line location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

The Panel finds it more likely true than not that the Respondent has registered and used the disputed domain name for phishing purposes. Registering and using a domain name containing a mark confusingly similar to a third party's mark, to imitate that mark owner and to engage in a phishing scheme, is a clear example of bad faith under the Policy. *BlockFi Inc. v. Jackson Oliver*, WIPO Case No. [D2022-2700](#).

Although the disputed domain name resolves to an error page, considering the circumstances of this case, it would not prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel also finds it more likely than not that the Respondent used fake contact data – information that at least in part referred to an uninvolved third party – in an effort to obfuscate its identity. Such conduct demonstrates the Respondent's bad faith.

The Complainant has successfully established the third UDRP element.

### **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 <middlleby.com> be transferred to the Complainant.

/Evan D. Brown/

**Evan D. Brown**

Sole Panelist

Date: June 14, 2024