

ADMINISTRATIVE PANEL DECISION

Awareness Corporation v. Robert Anderson
Case No. D2024-1460

1. The Parties

The Complainant is Awareness Corporation, United States of America ("United States"), represented internally.

The Respondent is Robert Anderson, United States.

2. The Domain Names and Registrar

The disputed domain names <puretrimcbdacvgummies.com> and <puretrimcbd.com> are registered with Name.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 5, 2024. On April 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 10, 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 (Redacted for Privacy, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 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 an amendment to the Complaint on April 15, 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 April 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2024. The Respondent sent email communications to the Center on April 12, 2024, April 15, 2024, April 17, 2024, and April 18, 2024, and the Center furnished information about settlement procedures, which the Parties did not conclude.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on May 24, 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 corporation established under the laws of the State of Nevada, United States, with its principal place of business in Mesa, Arizona, United States. The Complainant operates a website at "www.puretrim.com" (the Complainant's website) selling a range of health and wellness products online, including dietary supplements, under the PURETRIM brand. The Complainant's website is linked to social media platforms as well, with PURETRIM accounts on Facebook and Instagram.

The Complainant holds United States Trademark Registration Number 2878718 (registered on August 31, 2004) for PURETRIM as a word mark for dietary, food, and herbal supplements in international class 5. The registration is based on an application dated May 13, 2003, claiming first use in commerce on April 30, 2003. The Complainant also holds Canadian Trademark Registration Number TMA621665 (registered on October 5, 2004) for the same word mark, for pharmaceuticals and herbicides in international class 5.

The Registrar reports that the disputed domain names were both created on March 5, 2024, and registered in the name of the Respondent Robert Anderson, listing a postal address in the State of Minnesota, United States, and a contact email address with the domain name <topsourcemedias.com>. That domain name is associated with the website of Top Source Media, a Minnesota-based Internet marketing firm that advertises web design, search engine optimization, and content writing services, naming the Respondent Mr. Anderson as the founder.¹

The disputed domain names resolve to nearly identical websites (the "Respondent's Websites") headed "PureTrim" that sell, respectively, the chewable nutritional supplements "Pure Trim CBD Gummies" and "Pure Trim ACV + CBD Gummies", which are touted for their health and weight-loss benefits. CBD is cannabidiol (derived from marijuana plants) and "ACV" is an acronym for apple cider vinegar. These can be ordered through the websites for delivery by mail. The packages of gummies pictured on the Respondent's Websites are labeled "Pure Trim". The Respondent's Websites do not identify the website operator beyond copyright notices citing "Pure Trim CBD" and "Pure Trim CBD ACV Gummies".

The Complainant recounts that shortly after the Respondent's websites launched in 2024, the Complainant started receiving telephone calls from consumers complaining that they placed orders and paid for products on the Respondent's Websites but never received the goods or charged unauthorized amount. The Complainant investigated these complaints and confirmed that they did not derive from orders placed on the Complainant's website. The Complainant made multiple calls to the "help line" shown on the Respondent's Websites, but the individuals at the call center could not or would not identify the company they worked for.

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 names.

¹ Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) section 4.8.

Notably, the Complainant contends that both of the disputed domain names incorporate the Complainant's registered word mark in its entirety, and there is no evidence that the Respondent is known by a corresponding name or is using the disputed domain names other than to exploit the Complainant's mark by misleading Internet users as to source or tarnishing the Complainant's mark, offering goods that compete with the Complainant's health and dietary supplements. The Complainant argues that the Respondent is intentionally diverting consumers for commercial gain, disrupting the Complainant's business, and creating risks to consumers, who cannot identify the true source of the products in case of harm.

B. Respondent

The Respondent did not reply to the Complainant's contentions but sent a number of emails to the Center, including a message on April 17, 2024, saying simply, "They can have the domains. I don't care. I just want this to be done. Thanks."

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) and the respondent has no rights or legitimate interests in respect of the domain name;
- (iii) and the domain name has been registered and is being used 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 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark (the registered PURETRIM mark) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within both of the disputed domain names. Accordingly, the disputed domain names are 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, the abbreviations "cbd" and "acv" and the word "gummies") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names 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 names. 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 names such as those enumerated in the Policy or otherwise. The Respondent operates websites associated with the disputed domain names offering nutritional supplements labelled with the Complainant's distinctive and long-established mark, which is also used for nutritional supplements. There is no evidence that the Respondent or his business are otherwise commonly known by a corresponding name, and the Respondent's Websites, including their contact details, copyright notices and associated call center, obscure the source of the products sold on those websites. Such a deliberately confusing use of the disputed domain names cannot be deemed a use in connection with a "bona fide" offering of goods or services as contemplated by the Policy, paragraph 4(c)(i).

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 was more likely than not aware of the Complainant and its mark. The Complainant's PURETRIM mark is distinctive and has been used for more than 20 years to sell nutritional and dietary supplements online, the same field in which the Respondent's Websites are promoting supplements labelled "Pure Trim". The Respondent does not deny prior awareness but merely offered in correspondence after this proceeding commenced to let the Complainant "have the domains".

The Respondent's Websites obscure the identity of the Respondent, as does the call center provided for customer contacts. This supports the inference that the confusion as to source or affiliation in the disputed domain names themselves was intentional, and that the Respondent meant to attract Internet users for commercial gain to the Respondent's Websites by falsely suggesting an association with the Complainant's mark, which is one of the examples of bad faith given in the Policy, paragraph 4(b)(iv).

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 names <puretrimcbdacvgummies.com> and <puretrimcbd.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: June 7, 2024