

ADMINISTRATIVE PANEL DECISION

Wastequip, LLC v. Richard MacArthur, LearFans
Case No. D2024-3857

1. The Parties

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

The Respondent is Richard MacArthur, LearFans, Canada.

2. The Domain Name and Registrar

The disputed domain name <toterbrands.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2024. On September 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 23, 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 (Contact Privacy Inc. Customer) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 24, 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 September 24, 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 September 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 17, 2024.

On October 17 and 23, 2024, the Center received communications from a third-party.

The Center appointed Kaya Köklü as the sole panelist in this matter on October 28, 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 provider of waste handling equipment with its registered seat in the United States. Its product portfolio includes, among others, waste carts, containers, and trucks. The Complainant is internationally active.

The Complainant is the owner of the TOTER trademark, which has been first used in commerce in 1962. Among others, the Complainant is the registered owner of the United States Trademark Registration No. 1426599, registered on January 27, 1987, for TOTER, covering protection for waste related goods as protected in class 20 and 21.

The Complainant further operates its official website at “www.toter.com”.

The Respondent is reportedly located in Canada.

The disputed domain name was registered on September 5, 2024.

According to the case record and an independent search conducted by the Panel, the disputed domain name redirects to a website purportedly offering competing waste and recycle bins at discounted prices.

On September 11, 2024, the Complainant’s lawyer sent a cease-and-desist letter to the Respondent, and tried to solve the dispute amicably by inter alia requesting the transfer of the disputed domain name.

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.

B. Respondent

The Respondent did not reply to the Complainant’s contentions. The Center only received two email communications from a third party on October 21 and 23, 2024 indicating that the disputed domain name is “deactivated for auto renewal and will no longer be active”. However, this third party was – even upon various requests by the Center – not willing to clarify its relationship to the Respondent or to demonstrate any legitimacy in the context of the administrative proceeding.

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#), and, where appropriate, will decide consistent with the consensus views stated therein.

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 the TOTER trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the TOTER mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the TOTER mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term, here "brands", 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. In the absence of a response, the Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name. According to the evidence provided by the Complainant, confirmed by an independent search conducted by the Panel, the disputed domain name redirects to a website allegedly offering competing waste and recycling bins, which also makes it not difficult for the Panel to conclude that the Respondent is not making a bona fide or fair use of the disputed domain name. [WIPO Overview 3.0](#), section 2.5.3.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent must have had the Complainant and its TOTER trademark in mind when registering the disputed domain name. It is obvious to the Panel that the Respondent has deliberately chosen the disputed domain name, which comprises the Complainant's TOTER trademark in its entirety, to target the Complainant and its waste and recycling products. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

With respect to the use of the disputed domain name in bad faith, the Panel finds that the Respondent is using the disputed domain name in order to generate traffic to its own website by misleading third parties in a false belief that the website associated to the disputed domain name is operated or at least authorized by the Complainant. Particularly, the inherently misleading nature of the disputed domain name as well as the offering of competing products for sale, is in view of the Panel evidence of the Respondent's bad faith intent to target the Complainant for illegitimate commercial gain by deliberately creating a likelihood of confusion with the Complainant's TOTER trademark.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <toterbrands.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: November 11, 2024