

ADMINISTRATIVE PANEL DECISION

Phillips 66 Company v. Phillip Priest Pty. Ltd.
Case No. DAU2022-0004

1. The Parties

The Complainant is Phillips 66 Company, United States of America (“United States”), represented by Pirkey Barber PLLC, United States.

The Respondent is Phillip Priest Pty. Ltd., Australia.

2. The Domain Name and Registrar

The disputed domain name <phillips66lubricants.com.au> is registered with GoDaddy.com, LLC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 17, 2022. On March 18, 2022, the Center transmitted by email to GoDaddy.com, LLC., a request for registrar verification in connection with the disputed domain name. On March 22, 2022, GoDaddy.com, LLC transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy” or “.auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 23, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was April 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 19, 2022.

The Center appointed Andrew F. Christie as the sole panelist in this matter on April 26, 2022. 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

For more than 90 years the Complainant and its predecessors in interest have engaged in the world-wide manufacture, marketing, distribution, and sale of high-quality petroleum products and services, including gasoline, diesel, jet fuel, lubricants, motor fuels, and other related products and services. The Complainant and its predecessors have developed a network of licensees and sub-licensees who manufacture, market, distribute and sell authorized products and services throughout the world in approximately 9,000 branded stations. The Complainant is one of the largest finished lubricant suppliers in Australia and sells products to many key business markets, including automotive, trucking, agriculture, aviation, power generation, mining, and construction. The Complainant is ranked 27th on the 2020 Fortune 500 list and 61st on the 2020 Global Fortune list.

The Complainant is the owner of numerous trademark registrations, including Australian Trademark Registration No. 1459202 (filed on November 14, 2011, and registered on March 21, 2014) for the word trademark PHILLIPS 66.

The date on which the disputed domain name was registered by the Respondent was not specified by either the Complainant or the Registrar. The Complainant has provided a screenshot, taken on March 14, 2022, of the website resolving from the disputed domain name, at which is advertised women's clothing under the heading "Discount BEC + BRIDGE Clothing Outlet Clearance Sale". At the time of this decision, the disputed domain name resolves to what appears to be the same website.

5. Parties' Contentions

A. Complainant

The Complainant made the following contentions to establish that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The disputed domain name consists of the Complainant's PHILLIPS 66 trademark, and simply adds the descriptive term "lubricants" so as to reference the Complainant's products. The addition of the descriptive term "lubricants" does not cause the disputed domain name to present a different meaning, pronunciation, or overall visual impression from the famous PHILLIPS 66 trademark. The presence of the country-code Top-Level Domain ("ccTLD") ".com.au" does not distinguish the disputed domain name from the Complainant's PHILLIPS 66 trademark. There is no issue as to priority, as the Complainant and its predecessors in interest have used the PHILLIPS 66 trademark since at least as early as 1927, decades before the Respondent registered the disputed domain name.

The Complainant made the following contentions to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has neither used, nor made any demonstrable preparations to use, the disputed domain name or a name corresponding to it in connection with a *bona fide* offering of goods or services. The disputed domain name resolves to a website promoting and selling women's clothing under the brand "BEC + BRIDGE" and is not selling any of the Complainant's lubricants or other products through the website at the disputed domain name. The Respondent's mark "BEC + BRIDGE" bears no resemblance to the PHILLIPS 66 trademark or the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use its PHILLIPS 66 trademark or any other trademark owned by the Complainant. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant made the following contentions to establish that the disputed domain name was registered and is being used in bad faith. As the PHILLIPS 66 trademark is closely affiliated with the Complainant through its extensive and prominent use of the trademark for decades prior to the date on which the Respondent registered the disputed domain name, the Respondent had actual notice of the Complainant's rights in the PHILLIPS 66 trademark, and engaged in opportunistic bad faith when registering the disputed domain name. There is no plausible reason for the Respondent to choose to register a domain name

incorporating the name “Phillips”, the number “66”, and the term “lubricants”, other than with the intention of referencing the Complainant’s PHILLIPS 66 trademark and the lubricant products that the Complainant sells under this trademark. The Respondent’s registration of a domain name confusingly similar to the Complainant’s PHILLIPS 66 trademark with the prior knowledge of the Complainant’s rights in the trademark, and the Respondent’s use of this domain name for a website promoting and selling women’s clothing under a mark that does not resemble the PHILLIPS 66 trademark, strongly indicates that the disputed domain name either was registered for the purpose of selling it to the Complainant or a third party, or was registered and is used in order to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s name and trademark as to the source, sponsorship, affiliation, or endorsement of that website or of a product or service on that website. The Respondent owns no trademark or other intellectual property rights in the disputed domain name, and the disputed domain name does not consist of the legal name of, or a name commonly used to identify, the Respondent. The Respondent has not used the disputed domain name in connection with a *bona fide* offering of any goods or services, and has made no *bona fide* noncommercial or fair use of the Complainant’s trademark in a site accessible under the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Once the Second-Level Domain (“2LD”) and ccTLD identifiers are ignored (which is appropriate in this case), the disputed domain name consists of the whole of the Complainant’s registered word trademark PHILLIPS 66 with the addition of the word “lubricants”. The Complainant’s trademark is clearly recognizable within the disputed domain name. The addition of the word “lubricants” does not avoid a finding of confusing similarity of the disputed domain name with the Complainant’s trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent is not a licensee of the Complainant, is not otherwise affiliated with the Complainant, and has not been authorized by the Complainant to use its PHILLIPS 66 trademark. The Respondent has not provided any evidence that it has been commonly known by, or has made a *bona fide* use of, the disputed domain name, or that it has, for any other reason, rights or legitimate interests in the disputed domain name. The evidence provided by the Complainant shows that the disputed domain name has been used to resolve to a website that appears to offer for sale women’s clothing under the brand name of “BEC + BRIDGE”, which is a use unrelated to the disputed domain name. Given the confusing similarity of the disputed domain name to the Complainant’s trademark, the absence of any relationship between the Respondent and the Complainant, and the risk of implied false affiliation with the Complainant, the Respondent’s use of the disputed domain name is neither a *bona fide* use nor a legitimate noncommercial or fair use.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not rebutted this. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered or Subsequently Used in Bad Faith

The disputed domain name was registered many years after the Complainant and its predecessors started using the PHILLIPS 66 trademark. It is inconceivable that the Respondent registered the disputed domain

name ignorant of the existence of the Complainant's trademark, given that the disputed domain name consists of the Complainant's trademark with the addition of the word "lubricants", a product sold by the Complainant. Given the Respondent's lack of rights or legitimate interests in the disputed domain name and the confusing similarity of the disputed domain name to the Complainant's trademark, any use of the disputed domain name by the Respondent almost certainly implies an affiliation with the Complainant that does not exist. The Respondent's registration of the disputed domain name in these circumstances is a bad faith registration.

Furthermore, the evidence on the record provided by the Complainant indicates that the Respondent has used the disputed domain name in an attempt to attract, for commercial gain, Internet users to a website by creating confusion in the minds of the public as to an association between the website and the Complainant. The Respondent's use of the disputed domain name in this manner is a bad faith use.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

7. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name, <phillips66lubricants.com.au>, be transferred to the Complainant.

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: May 10, 2022