

ADMINISTRATIVE PANEL DECISION

Consumer Reports, Inc. v. Heng Vicheth
Case No. D2022-2838

1. The Parties

The Complainant is Consumer Reports, Inc., United States of America (“United States”), represented by Cozen O’Connor, United States.

The Respondent is Heng Vicheth, Cambodia.

2. The Domain Name and Registrar

The disputed domain name <quickconsumerreports.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2022. On August 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 2022, the Registrar 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 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 August 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 25, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on August 30, 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

The Complainant is a non-profit consumer product testing and advocacy organization that publishes the print and digital family of CONSUMER REPORTS publications. Formed as an independent, nonprofit organization in 1936, the Complainant serves the public through product testing and ratings, research, journalism, public education and advocacy.

The Complainant has been using the CONSUMER REPORTS and Consumer Reports-formative trademarks continuously since 1942. It is the owner, amongst others, of the following registrations:

- United States registration No. 0,672,849 for CONSUMER REPORTS, registered on January 20, 1959, subsequently renewed, in class 16;
- United States registration No. 2,738,364 for CONSUMER REPORTS.ORG and device, registered on July 15, 2003, subsequently renewed, in class 42; and
- United States registration No. 5,064,394 for CONSUMER REPORTS, registered on October 18, 2016, in classes 9, 35 and 41.

The disputed domain name <quickconsumerreports.com> was registered on May 8, 2020 and is not being presently used. In the past, the disputed domain name has been used in connection with a webpage displaying product reviews in a similar format to that of the Complainant but purportedly monetizing such reviews with commissions earned from a third-party market place to which Internet users were directed.

5. Parties' Contentions

A. Complainant

According to the Complainant, it was originally named Consumers Union of United States, Inc., and has been an independent, nonprofit organization since 1936, serving the public through unbiased product testing and ratings, research, journalism, public education and advocacy.

According to the Complainant, it is a trusted source due to its rigorous, independent testing and research. In its website, the Complainant advocates that its investigative journalism, advocacy, and digital testing empowers consumers, informs people's purchasing decisions, influence businesses to improve products and services they deliver, and strengthen norms, laws, and regulations through science, evidence, and data.

Under the Complainant's view, the disputed domain name is confusingly similar to the Complainant's trademark, not being the addition of the generic term "quick" capable of adding any distinctness thereto. Quite to the contrary, the Complainant asserts that the addition of the term "quick" does nothing to reduce any consumer confusion and, if anything, exacerbates the confusion.

As to the absence of rights or legitimate interests in the disputed domain name, the Complainant argues that:

(a) the Respondent has been intentionally attracting Internet users to the website that resolved from the disputed domain name in order to lure users into buying those reviewed products on Amazon, given that the Respondent is an "Amazon affiliate" which means that it receives a commission on every sale it directs to Amazon from the disputed domain name;

(b) a comparison of the website that resolved from the disputed domain name with the Complainant's official webpage reveals that the Respondent's website is similar in form and substance to the Complainant's website except that the Respondent is directing sales to Amazon for a profit; thus the Respondent's use

appearing to be a deliberate attempt to pass itself off as the Complainant in order to leverage the Complainant's goodwill;

(c) the Complainant has not given the Respondent permission to use its registered trademarks or any domain name confusingly similar to the Complainant's registered trademark; and

(d) the Respondent has not been commonly known by the disputed domain name.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name given that:

(a) the Respondent registered the disputed domain name in bad faith, likely creating consumer confusion about the source, sponsorship, affiliation or endorsement of the disputed domain name;

(b) the Respondent operated a website at the disputed domain name for commercial gain, earning revenues when an Internet user clicked on a review on the Respondent's website and was then sent directly to Amazon in order to purchase the product; and

(c) by attempting to provide the same types of product reviews and rating that the Complainant provides (albeit for a profit), the Respondent is trying pawn off on the Complainant's goodwill in order to receive Amazon affiliate commissions.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(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 or is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

The Complainant has established rights in the CONSUMER REPORTS trademark.

The Panel finds that the Complainant's trademark is entirely reproduced in the disputed domain name. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. The addition of the term "quick" does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. The first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent's rights to or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not formally responding the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, the Complainant indeed states that it has not given the Respondent permission to use its registered trademarks or any domain name confusingly similar to the Complainant's registered trademark.

Also, the absence of any trademarks or trade names registered by the Respondent corresponding to the disputed domain name, or any possible link between the Respondent and the disputed domain name, that could be inferred from the details known of the Respondent or the webpage relating to the disputed domain name, corroborate with a finding as to the absence of a right or legitimate interest. In addition to that the Respondent (apart from the heading of the website that used to be available at the disputed domain name) did not use throughout the website "quick consumer reports" but rather only "Consumer Reports" and in a manner and display that clearly evoked the Complainant's official website "look and feel".

Given the monetization obtained by the Respondent from the reviews, linking them to Amazon's reseller webpages, the Panel finds that the Respondent targeted the Complainant so as to make a profit, what does not characterize a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain.

Therefore, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name. The second element of the Policy has also been met.

C. Registered and Used in Bad Faith

As seen above, the Respondent adopted a similar display of product reviews in a similar format to that of the Complainant's, however monetizing such reviews with commissions earned from a third-party market place to which Internet users were directed. In addition to that, the Respondent (apart from the heading of the website that used to be available at the disputed domain name) did not use throughout the website "quick consumer reports" but rather only "Consumer Reports" and in a manner and display that clearly evoked the Complainant's official website "look and feel".

Such use, under this Panel's view indicates that the Respondent was aware of the Complainant when registering and using that disputed domain name, in bad faith.

Furthermore, the following are indicatives of the Respondent's bad faith:

- a) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name;
- b) the present inactive use of the disputed domain name indicates the Respondent's bad faith; and
- c) the indication of what appears to be false contact details not having the Center been able to deliver the Written Notice to it.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

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 <quickconsumerreports.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: September 13, 2022