

ADMINISTRATIVE PANEL DECISION

Corning Incorporated v. Gabriel Joseph, Clearer Technology
Case No. D2022-3136

1. The Parties

Complainant is Corning Incorporated, United States of America (“United States”), represented by Gowling WLG (Canada) LLP, Canada.

Respondent is Gabriel Joseph, Clearer Technology, United States, represented by Envisage Law, United States.

2. The Domain Names and Registrar

The disputed domain names <corningemployees.com> and <corningshareholders.com> (the “Domain Names”) 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 August 25, 2022. On August 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email to Complainant on August 26, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on September 2, 2022.

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 Respondent of the Complaint, and the proceedings commenced on September 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 29, 2022. An email from Respondent’s Representative was received on September 9, 2022, requesting an additional four calendar days until October 3, 2022 to respond to the Complaint in this proceeding. The request was granted by the Center on September 12, 2022. The Response was filed with the Center on September 30, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on October 10, 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.

On October 7, 2022, Complainant requested leave to file a supplemental submission to address points raised in the Response which Complainant asserts could not have been reasonably anticipated in the Complaint.

On October 12, 2022, the Panel issued Procedural Order No. 1, granting Complainant 14 days to file its supplemental submission, and granting Respondent seven days thereafter to reply.

On October 31, 2022, Complainant submitted a supplemental submission in which Complainant asked that a second Domain Name, <corningsshareholders.com>, be added to the proceeding.

On November 7, 2022, Respondent replied to Complainant's supplemental submission. With respect to the second Domain Name, Respondent stated:

"Respondent does not deny that <corningsshareholders.com> resolves to [the same website as <corningemployees.com>, namely, GorillaEmployees.com. Respondent is not aware of what WIPO is doing concerning the identity of the owner of <corningsshareholders.com>."

On November 15, 2022, the Panel issued Procedural Order No. 2, stating in part: "The Panel orders Respondent to state, on or before November 19, 2022, whether Respondent is in fact the registrant of both Domain Names, namely, <corningemployees.com> and <corningsshareholders.com>."

On November 18, 2022, Respondent informed the Center that it is the registrant of both Domain Names (<corningemployees.com> and <corningsshareholders.com>).

4. Factual Background

Complainant describes itself as "one of the world's leading innovators in materials science, with a more than 165-year track record of life-changing inventions." At its main website, located at "www.corning.com", Complainant describes itself as follows: "For nearly 170 years, Corning has combined its unparalleled expertise in glass science, ceramics science, and optical physics with deep manufacturing and engineering capabilities to develop life-changing innovations and products."

Complainant holds more than 300 registrations for the trademark CORNING in numerous jurisdictions worldwide, including United States Patent and Trademark Office Reg. No. 618,649, registered on January 3, 1956.

Complainant alleges that its CORNING trademark has become famous, and the Panel is inclined to agree. Complainant has branched out over the years and decades, but its line of CORNING kitchen cookware and glassware by itself has achieved considerable renown over the years.

The Domain Name <corningemployees.com> was registered on June 10, 2022. The Domain Name <corningsshareholders.com> was registered on October 5, 2022, after the Complaint and the Response in this proceeding were filed.

Both Domain Names currently resolve to a website located at "www.gorillaemployees.com" (a domain name that was registered on September 8, 2022). It is not clear whether Respondent owns or controls this domain name, which is registered with the same Registrar as the two disputed Domain Names and uses the same privacy shield. In any event, Respondent evidently is able to redirect the Domain Names to <gorillaemployees.com>, and is able to cause content to be placed on the <gorillaemployees.com> site.

At the top of the <gorillaemployees.com> site is the disclaimer: “THIS WEBSITE IS NOT ASSOCIATED WITH NOR ENDORSED BY CORNING.” The website goes on to assert in detail that Complainant persecutes and suppresses employees, customers, and shareholders who have faith in God and who embrace traditional family values, and that Complainant embraces and advances radical new concepts of corporate governance.

Toward the end of the litany of criticisms contained at the website is a series of questions directed to employees of Complainant, including whether they believe they have been discriminated against, and whether they potentially might be interested in forming a union. If the reader answers “Yes” to any of the questions the reader is invited to click the “Contact Us” link. (On the <gorillaemployees.com> to which the Domain Name <corningshareholders.com> resolves, the website content is nearly identical except the words “customers and shareholders” are added to “employees” in a few places.)

Since the Domain Names have linked to the <gorillaemployees.com> site, Respondent has modified the content in a few instances, to reflect new developments surrounding Complainant’s alleged corporate practices and how these developments might be germane to the United States elections which occurred on November 8, 2022.

At the time the Complaint in this proceeding was filed, the Domain Name <corningemployees.com> resolved to a website, apparently owned and controlled by Respondent, located via the domain name <clearertechnology.com>. This website states “Clearer Technology is always developing new systems, sites and technologies to handle today’s opportunities.” The only other text at this site is: “This website is under construction.” Respondent does not explain why he chose to have this Domain Name resolve to Respondent’s own website until after the Complaint in this proceeding was filed.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied all three elements required under the Policy for a transfer of the Domain Names.

B. Respondent

Respondent alleges that he is entitled to exercise his free speech rights of criticism by using the Domain Names to host a website critical of Complainant’s employment and corporate governance practices. Respondent claims that he is not deriving any income from the website.

6. Discussion and Findings

6.1 Consolidation of Dispute

Under section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), a panel may consolidate in a single proceeding a complaint filed against multiple respondents, based primarily on whether: (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties.”

Guided by these principles, the Panel here concludes that consolidation in the instant case is appropriate. First, Respondent has confirmed that he owns both Domain Names. Second, Respondent has not asserted that there would be any prejudice to his case if the two Domain Names here were consolidated in a single proceeding. Third, the Domain Names are being used for a virtually identical purpose, and Respondent’s arguments *vis-à-vis* each Domain Name is essentially identical.

6.2 Merits of Dispute

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to each of the Domain Names:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark CORNING through longstanding registration and widespread use demonstrated in the record. The Panel also concludes that the Domain Names are confusingly similar to that mark. The mark CORNING is clearly recognizable within both Domain Names.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

For each of the Domain Names, pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes, on this record, that Complainant has failed to carry its burden of proving that Respondent lacks rights or legitimate interests in connection with the Domain Name. The legitimacy of using a domain name which contains another party's trademark for free-speech criticism purposes is addressed generally throughout several sections of the [WIPO Overview 3.0](#), including sections 2.4 through 2.6. One of the factors to be considered surrounds the composition of the domain name itself. Under section 2.5.1 of the [WIPO Overview 3.0](#), there is a spectrum of domain names, ranging from domain names which tend to suggest sponsorship by the trademark owner (e.g., <trademark-usa.com> or <buy-trademark.com>), to domain names which tend to suggest, on their face at least, that the domain name is not affiliated with the trademark owner (e.g., <trademarksucks.com>).

Section 2.5.1 identifies a middle group of domain names (e.g., <okidataparts.com>, <covancecampaign.com>) which do not necessarily suggest affiliation with the trademark owner, but which are not obviously critical of the trademark. In such instances, further analysis is usually warranted to determine whether a respondent's use of a domain name to engage in criticism of a complainant is permissible under the UDRP.

The Panel is somewhat troubled by the fact that the first Domain Name (<corningemployees.com>) originally resolved to a website presumably affiliated with Respondent and not dedicated to criticism, namely, the "www.clearertechnology.com" site, and that the Domain Name did not resolve to a website with critical content about Complainant and a clear disclaimer until after the Complaint was filed in this proceeding.

The Panel is also somewhat troubled that the second disputed Domain Name, <corningsshareholders.com>, was registered after the Complaint and the Response in this proceeding were filed.

On the other hand, the content at the <gorillaemployees.com> website appears to have been tailored, at least in part, specifically to Complainant and its alleged employment and corporate governance practices. Moreover, the content has been updated and modified as new developments have arisen. In addition, the disclaimer featured at the website is large and prominent. Finally, there is no evidence that Respondent derives any income from the “www.gorillaemployees.com” site.

In sum, while this is a close call, on this record the Panel finds it more likely than not that Respondent’s motivation for registering the Domain Names (which, again, do not strongly suggest affiliation with Complainant but do not on their face indicate opposition to Complainant) was to make noncommercial or fair use of the Domain Names. Accordingly, the Panel finds that Respondent has rights or legitimate interests in respect of the Domain Names.

Complainant has not established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

For each of the Domain Names, paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

(i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or

(ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online 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 of a product or service on Respondent’s website or location.

The Panel need not address this element, in view of its conclusion above regarding “Rights or Legitimate Interests.”

7. Decision

For the foregoing reasons, the Complaint is denied.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: November 28, 2022