

ADMINISTRATIVE PANEL DECISION

Corning Incorporated v. Brenda Hernandez, PIN110201K57
Case No. D2023-0450

1. The Parties

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

The Respondent is Brenda Hernandez, PIN110201K57, Mexico.

2. The Domain Name and Registrar

The disputed domain name <corningmonterrey.com> is registered with Neubox Internet S.A. de C.V. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2023. On February 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2023, 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 (Domain Admin, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center also informed the Parties that the language of registration agreement is Spanish. The Complainant filed an amendment to the Complaint on February 14, 2023, also requesting English to be the language of proceeding. The Respondent did not comment on the language of the proceedings.

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 February 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 27, 2023.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on March 31, 2023. 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.

Language of the Proceedings

Pursuant to paragraph 11 of the Rules, unless otherwise agreed by the parties, the default language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise.

As indicated above, the Center has informed the parties that the language of the registration agreement for the disputed domain name is Spanish. Nevertheless, the Complainant has filed the Complaint in English and has confirmed its request for the language of the proceeding to be English.

The Respondent did not oppose the Complainant's language request for English.

Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality and, that each party is given a fair opportunity to present its case.

The Panel finds that ordering the Complainant to translate the Complaint, in view of the costs involved, would imply a significant burden to the Complainant, in addition to an unwarranted delay in the proceeding.

English is the international business language and more likely than not is understandable to the Respondent who failed to answer the Complaint and did not oppose the Complainant's language request when it was given the opportunity to do so.

In view of the foregoing, the Panel decides that the language of the proceeding is English.

4. Factual Background

The Complainant, Corning Incorporated, is one of the world's leading innovators in materials science with a history of more than 165 years of outstanding inventions, with great expertise in glass science, ceramic science, and optical physics.

The Complainant owns numerous trademark registrations worldwide comprised of, or containing, CORNING, including the following:

- Mexico Trademark Registration No. 799569 CORNING, registered on July 21, 2003;
- Mexico Trademark Registration No. 645466 CORNING, registered on August 2, 1999;
- United States Trademark Registration No. 618649 CORNING, registered on January 3, 1956;
- United States Trademark Registration No. 1748228 CORNING, registered on January 26, 1993;
- European Union Trademark Registration No. 16966822 CORNING, registered on June 11, 2017;
- Canada Trademark Registration No. TMA240498 CORNING, registered on March 7, 1980;
- China Trademark Registration No. 576489 CORNING, registered on December 20, 1991;
- Australia Trademark Registration No. 130807 CORNING, registered on January 29, 1957.

Also, the Complainant owns the domain name <corning.com> which resolves to the Complainant's official website.

The disputed domain name <corningmonterrey.com> was registered on September 26, 2022 and does not resolve to an active webpage, but rather a parking page of the Registrar.

5. Parties' Contentions

A. Complainant

The Complainant is one of the world's leading innovators in materials science, with a more than 165-year track record of life changing inventions and is the owner of more than 325 registrations worldwide for trademarks comprised of, or containing CORNING.

The Complainant claims that the CORNING trademark enjoys widespread recognition, has generated significant goodwill and has become famous.

The Complainant claims that the disputed domain name is confusingly similar with the trademark CORNING in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

In 2018 alone, the Complainant generated USD 11.29 billion in revenue, and over USD 30 billion between 2016 and 2018.

The Complainant operates a plant in Monterrey, Mexico, while also having over 14,000 employees in Mexico.

The Complainants believe that the disputed domain name has been registered for the sole reason of commercial gain by means of misleadingly diverting consumers seeking the Complainant to the Respondent's website.

Finally, the Complainant requests the Panel to issue an order to have the disputed domain name transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's CORNING trademark.

The disputed domain name incorporates the Complainant's trademark CORNING in its entirety with the addition of "monterrey" which does not prevent a finding of confusing similarity. Section 1.8 of [WIPO Overview 3.0](#) provides that when the relevant trademark is recognizable within the disputed domain name – as it occurs in this case- the addition of a term would not prevent a finding of confusing similarity under the first element.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark CORNING in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's 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) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 6.C of this decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name.

As established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry." Here, the nature of the disputed domain name carries a high risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant and the Complainant's trademark CORNING mentioned in paragraph 4 above (Factual Background) when it registered the disputed domain name on September 26, 2022.

In accordance with section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant's CORNING trademark in the disputed domain name creates a presumption of bad faith.

The Complainant has submitted evidence to support that the trademark CORNING mentioned in paragraph 4 above is widely known and was registered and used many years before the Respondent registered the disputed domain name.

The Respondent when registering the disputed domain name has targeted the Complainant's trademark CORNING with the intention to confuse Internet users and capitalize on the fame of the Complainant's name and trademark.

"Monterrey" is the name of a Mexican city where the Complainant operates a plant. Therefore, the inclusion of "monterrey" in the disputed domain name only contributes to create confusion among Internet users who will think that the website to which the disputed domain resolves is an official website of the Complainant for its business in that city.

The clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of [WIPO Overview 3.0](#)).

Pursuant to section 3.3 of [WIPO Overview 3.0](#), the fact that the disputed domain name does not resolve to an active website does not prevent a finding of bad faith under the doctrine of passive holding. See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has registered and used the disputed domain name in bad faith.

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 <corningmonterrey.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: April 14, 2023