

ADMINISTRATIVE PANEL DECISION

Whirlpool Properties, Inc. v. larry king
Case No. D2023-4048

1. The Parties

Complainant is Whirlpool Properties, Inc., United States of America, (“United States”) represented by ALG India Law Offices, India.

Respondent is larry king, United States.

2. The Domain Name and Registrar

The disputed domain name <whirlpoolcorpusa.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 27, 2023. On September 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 28, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on October 3, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on October 5, 2023.

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 Respondent of the Complaint, and the proceedings commenced on October 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 1, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 3, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on November 17, 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.

4. Factual Background

The following facts appear from the Complaint (as amended solely to add the Registrar-provided registrant information as the formal Respondent) and its annexes, which have not been contested by Respondent.

Complainant is one of the world's largest home appliance makers and since 1906 has provided its products and services under the trademark WHIRLPOOL (the "WHIRLPOOL Mark"), as well as that term being the prominent and essential portion of the name of its corporate parent. Complainant's products and service are marketed under the WHIRLPOOL Mark through physical and online retail stores in more than 170 countries around the world.

The fame and recognition of Complainant's WHIRLPOOL Mark is well supported in the Complaint as the evidence shows the WHIRLPOOL Mark was recognized to identify a number of first-to-market home appliance innovations, including: the first electric wringer washer in 1911, the first residential stand mixer in 1919, the first countertop microwave in 1967, the first energy and water efficient topload washer in 1998 and the first top-load washer with a removable agitator in 2021.

Complainant also shows it incorporates the WHIRLPOOL Mark into its official domain names <whirlpool.com> and <whirlpoolcorp.com>, both of which Complainant registered in 1998, and used since that time to access Complainant's official WHIRLPOOL website ("Official Website") to promote and offer its products and render its services to its customers under the WHIRLPOOL Mark.

Complainant owns numerous trademark registrations around the world for the WHIRLPOOL Mark for its products and services, including the following incontestable trademark registrations of record with the United States Patent and Trademark Office ("USPTO"):

United States Registration No. 581,480, WHIRLPOOL, registered on October 27, 1953, for dish washing machines; domestic laundry appliances; namely, washing machines, clothes drier machines, and ironing machines in International Class 7, claiming a first use date of January 29, 1951; and

United States Registration No. 626,550, WHIRLPOOL, registered on May 8, 1956, for refrigerators, and freezer chests in International Class 11, claiming a first use date of May 2, 1955.

The Whois record shows the disputed domain name was registered on June 29, 2023, and Complainant states that the disputed domain name did not resolve to an active website as of the filing of the Complaint.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

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 Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the WHIRLPOOL Mark for its home appliance products and services in its registrations for the WHIRLPOOL Mark dating back to 1951. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting trademark registration documents in the name of Complainant and therefore, Complainant has demonstrated it has rights in the WHIRLPOOL Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). Based on the available record, the Panel also finds Complainant has established unregistered common law trademark or service mark rights for the purposes of the Policy. Specifically, through Complainant’s continuous and extensive use, promotion, and advertising for over a century to achieve worldwide recognition and fame the WHIRLPOOL Mark has acquired sufficient distinctiveness, reputation, and goodwill to establish common law rights for Complainant and the WHIRLPOOL Mark as a source identifier for its products and services. [WIPO Overview 3.0](#), section 1.3.

The Panel finds the entirety of the WHIRLPOOL Mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. See also, *Valero Energy Corporation and Anr. v. WhoisGuard Protected, WhoisGuard Inc. / kello warmann*, WIPO Case No. [D2019-1250](#).

While the addition of other terms appended to the WHIRLPOOL Mark here, the abbreviation “corp” and geographic indicator “usa” may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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. Further, it is well established that the applicable Top-Level Domain (“TLD”) in a domain name (such as “.com” in the instant case) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.

Based on the available record, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While 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 often impossible 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. 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 record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

First, Complainant asserts that Respondent is not sponsored by or affiliated with Complainant in any way, nor has Complainant authorized or given Respondent permission or license to use Complainant’s trademarks in any manner, including in domain names.

Second, Complainant contends Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests under Policy paragraph 4(c)(ii). Complainant has shown in the Whois information evidence submitted in its annexes that Respondent, as registrant of the disputed domain name, identified as “larry king” is not commonly known by the disputed domain name because it clearly bears no resemblance to it, nor to the WHIRLPOOL Mark or <whirlpool.com> domain name.

Prior UDRP panels have held where no evidence, including the Whois record for the disputed domain name, suggests that Respondent is commonly known by the disputed domain name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of Policy paragraph 4(c)(ii). See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#).

Third, Complainant’s evidence shows the disputed domain name resolves to an inactive website. Respondent, therefore, is not making a legitimate noncommercial or fair use of the disputed domain name nor using it in connection with a *bona fide* offering of goods or services to confer a right or legitimate interest within the meaning of Policy paragraphs 4(c)(i) and (iii) because there is no evidence the disputed domain name is being used at all. See *Valero Energy Corporation and Valero Marketing and Supply Company v. Valero Energy*, WIPO Case No. [D2017-0075](#).

Moreover, the Panel finds that the disputed domain name is inherently misleading. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used 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. The panel may, therefore, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b).

[WIPO Overview 3.0](#), section 3.2.1. See *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant contends that since Complainant has developed a distinctive and widely recognized reputation in the WHIRLPOOL Mark, Respondent was no doubt aware of the WHIRLPOOL Mark and intentionally targeted Complainant and its mark in making the decision to configure and register the disputed domain name essentially identical to Complainant's WHIRLPOOL Mark except for the addition of terms which enhance its impersonation of Complainant by adding the abbreviation for corporation and the geographic locator USA, where Complainant originated its business and ostensibly where Respondent is also located.

Given the widespread recognition of Complainant's WHIRLPOOL Mark worldwide shown in the evidence noted under Section 4 above, including the United States, where Respondent appears to be located, the century plus of registered use of the WHIRLPOOL Mark prior to Respondent's assumed registration of the disputed domain name on June 29, 2023, Respondent likely had actual knowledge of Complainant's rights when it registered the disputed domain name, which shows bad faith registration in the circumstances of this proceeding. See *Alstom v. Domain Investments LLC*, WIPO Case No. [D2008-0287](#); see also *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#).

Further the facts set forth above make it reasonable for the Panel to conclude it is more likely than not that Respondent targeted Complainant's trademark to use it to trade on Complainant's reputation and goodwill, and Respondent is found, therefore, to have registered and used the disputed domain name in bad faith. See *Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whols Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#).

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes as it did in 6B above, Respondent is passively holding the disputed domain name based on the browser flag it generates: "This site can't be reached" which represents either non-use or linking to an inactive website. Complainant contends that the disputed domain name has never resolved to an active page, as it has remained inactive since its registration. Prior UDRP panels have found under the doctrine of passive holding that that the word bad faith "use" in the context of paragraph 4(a)(iii) does not require a positive act on the part of respondent – instead, passively holding a domain name can constitute a factor in finding bad faith registration and use pursuant to Policy paragraph 4(a)(iii). [WIPO Overview 3.0](#), Section 3.3. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); see also *Alitalia-Linee Aeree Italiane S.p.A v. Colour Digital*, WIPO Case No. [D2000-1260](#).

Complainant's WHIRLPOOL Mark has a strong reputation and is widely known, as evidenced by its substantial use in the United States and 170 countries around the world, in use for over a century before the registration of the disputed domain name. Moreover, the composition of the disputed domain name encompasses the WHIRLPOOL Mark in its entirety and adds terms to make it nearly identical to Complainant's official domain name <whirlpoolcorp.com>, on which Complainant hosts an active website. The Panel finds, therefore, that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. See *Telstra Corporation Limited v. Nuclear Marshmallows*, *supra*.

Respondent failed to submit a response or to provide any evidence of actual or contemplated good-faith use of the disputed domain name. Complainant's WHIRLPOOL Mark has grown in recognition to the level of worldwide recognition, supporting the implausibility of any good faith use to which the disputed domain name may now be put. The factors present here are well-settled as supporting a finding of bad faith use for passive holding or non-use of a disputed domain name that is confusingly similar to a complainant's mark. See, *Instagram, LLC v. Asif Ibrahim*, WIPO Case No. [D2020-2552](#); [WIPO Overview 3.0](#), section 3.3.

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied paragraph 4(a)(iii) 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 <whirlpoolcorpusa.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: December 2, 2023