Decision for dispute CAC-UDRP-106761

Case number	CAC-UDRP-106761
Time of filing	2024-07-31 11:14:42
Domain names	russellstover.org

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Name	yassine haouzi rezgui

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant holds multiple trade marks for RUSSELL STOVER, covering many jurisdictions in classes 30 and 35. For example, these include the following registered word marks:

RUSSELL STOVER	United States	739454	16/10/1962	30
RUSSELL STOVER	International	1243266	28/01/2015	29, 30, 35, 43
RUSSELL STOVER	European Union	004342077	28/04/2006	30, 35
RUSSELL STOVER	Canada	TMA442500	05/05/1995	30
RUSSELL STOVER	Mexico	421292	04/09/1992	30

FACTUAL BACKGROUND

The Complainant was founded in 1845 and is a well-known chocolate maker based in Switzerland. As a leader in the market of premium quality chocolate, the Complainant has 11 production sites in Europe and the United States and its more than 2,500 products are distributed via 28 subsidiaries, 500 own retail shops and a comprehensive network of more than 100 distributors in over 120 countries. The Complainant has more than 14 thousand employees and made a revenue of CHF 5.2 billion in 2023. The Complainant acquired United States-based Russell Stover Candies, LLC ('Russell Stover') in 2014 for approximately USD 1.6 billion. Russell Stover was established in 1923 in Denver, Colorado, and has been headquartered in Kansas City, Missouri, since 1932. Russell Stover changed its company name to Russell Stover Candies in 1943 (having previously been known as Mrs. Stover's Bungalow Candies). Russell Stover chocolates are made in the United States across three factories and are available at 13 retail locations. The Russell Stover division of the Complainant made sales of USD 377 million in 2022.

The Complainant has an online site where it advertises and sells its goods and the main domain is <russellstover.com> which was registered in 1996. The Complainant also holds <russellstover.net> (registered in 2010) and <russellstover.us> (registered in 2014). The brand also enjoys a notable social media presence with, for example, almost 50 thousand followers on Facebook at (https://www.facebook.com/RussellStoverUS/), almost 18 thousand followers on Instagram (https://www.instagram.com/russellstoverus/), and c.8 thousand followers on LinkedIn (https://www.linkedin.com/company/russell-stover-chocolates).

The disputed domain name <russellstover.org> was registered on 30 March 2024. It resolved to a parking type/advertising page that looked to be for a website design company. The Panel visited the domain on 9 September 2024 and it resolved to a similar but more sophisticated parking/advertising page with advertising for template website design services. It was headed with the words "RussellStover is here." On 4 June 2014, the Complainant by its lawyers, send a cease and desist letter to the Respondent via the details on the WHOIS. There was no answer. The Registrar has revealed that the Respondent is an individual from Morocco named Yassine Haouzi, Rezgui.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

It says we are comparing the name and mark, russellstover, with the disputed domain name, <russellstover.org>, and they are identical and there is implied affiliation. The Complainant says that its mark is a highly distinctive trade mark and has a reputation. It cites a previous UDRP decision that acknowledged this reputation and renown, see Chocoladefabriken Lindt & Sprüngli AG v. Isaac Goldstein, WIPO Case No. D2015-2168: 'The Domain Name is confusingly similar to the well-known trade mark, RUSSELL STOVER. When the Domain Name was registered (on July 7, 2015), RUSSELL STOVER was already internationally recognized in (at least) the field of confectionery products…'. It says the disputed domain name, is identical to this highly distinctive trade mark, and it fully incorporates it and/or is it as the suffix is irrelevant for similarity.

The Complainant says the Respondent has no legitimate rights or interests in the disputed domain name.

As to Bad Faith, the Complainant says the disputed domain name was registered to confuse and mislead its clients and potential clients, to obtain a financial advantage by attracting web traffic, and mostly likely by using the disputed domain name for phishing purposes and to prevent or block the Complainant from using it and for cybersquatting. The Complainant notes that the MX or messaging servers have been configured. Evidence of this was provided.

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Under paragraph 4(a) of the UDRP, the Policy, a complainant can only succeed in administrative proceedings if the panel finds:

(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 domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

A complainant must prove that each of these three elements are present.

There is no question that the Complainant has rights in the name and word mark. This Panel, like the WIPO panel in Case No. D2015-2168, finds it is a well-known mark or a mark with a reputation. The suffix is to be disregarded for the first limb so the disputed domain name is identical. When the whole mark is used this is often impersonation. The Panel finds that the disputed domain name is identical to a trade mark in which the Complainant has Rights.

As to the second limb, a complainant is only required to make out a prima facie case that a respondent lacks rights or legitimate interests and then the burden shifts to the respondent to show it has rights or legitimate interests in the domain name. If it fails to do so, the complainant is deemed to have satisfied the limb in paragraph 4(a) (ii). See WIPO Case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd. The Complainant has discharged its burden on this limb. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. See the Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>. The Respondent is not known by the names in the WHOIS.

There is no descriptive or fair or legitimate use on the face of the matter. Here, there is little use but it is commercial and promotional and more than parking. Even in passive holding cases, the outcome is fact sensitive, the factors in the other limbs are highly relevant. This is not strictly a passive holding case but it is analogous to those cases. There is commercial use and there is impersonation. What could be clearer than the words “RUSSELLSTOVER IS HERE.”

There is no bona fide offering. For example, as a reseller or distributor or for speech purposes. The Complainant’s registered and well-known mark is being used to attract traffic and promote the Respondent’s web design services.

The configuration of MX records often suggests that there may be phishing or fraud. Such purposes include sending e-mail, phishing, identity theft, or malware distribution. WIPO Overview 3.0, section 3.4. See, e.g., DeLaval Holding AB v. Registration Private, Domains By Proxy LLL / Craig Kennedy, WIPO Case No. D2015-2135. See also AB Electrolux v. domain admin, WIPO Case No. D2023-2997 and Morgan Stanley v. Stone Gabriel, Forum Case No. 1998634 (2022) and TEVA Pharmaceutical Industries Limited v. Name Redacted, WIPO Case No. D2022-3791.

The Complainant has discharged its burden on the second limb of the Policy.

As to Bad Faith, the MX records are also relevant here and previous panels have also found a respondent’s failure to respond to a cease-and-desist letter to constitute evidence of Bad Faith, see, for example, Klarna Bank AB v. Super Privacy Service LTD WIPO Case No. D2021-2153. The passive Bad Faith test is also analogous. Where a famous mark is incorporated into a domain name without any legitimate reason or explanation, Bad Faith can often be inferred. The Respondent did not come forward to explain the reasons for the selection of the disputed domain name and why there is no Bad Faith. But here there is commercial use to attract traffic so it is not a passive use case per se. For the various reasons above, the Panel finds that the disputed domain name was registered and is used in Bad Faith.

The Complainant has made out its case and the Panel orders transfer.

FURTHER STATEMENTS

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **russellstover.org**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2024-09-09

Publish the Decision