Decision for dispute CAC-UDRP-106883

Case number	CAC-UDRP-106883
Time of filing	2024-10-01 10:10:14
Domain names	russellstoverllc.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Chocoladefabriken Lindt & Sprüngli AG

Complainant representative

Organization	SILKA AB

Respondent

Name	Second Second

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 is the owner of many trademark registrations for "RUSSELL STOVER", including the following:

i) US trademark registration no. 739454, registered on October 16, 1962 for products included in class 30 and duly renewed;

ii) International registration no. 1243266, registered on January 28, 2015 for products and services included in classes 29, 30, 35 and 43;

iii) EUTM registration no. 4342077, registered on April 28, 2006 for products and services included in classes 30 and 35 and duly renewed;

iv) Canadian trademark registration no. TMA442500, registered on May 5, 1995 for products included in class 30 and duly renewed;

v) Mexican trademark registration no. 421292, registered on September 4, 1992 for products included in class 30 and duly renewed.

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 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 approximately 8 thousand followers on LinkedIn (https://www.linkedin.com/company/russell-stover-chocolates).

The disputed domain name <russellstoverllc.com> was registered on September 9, 2024 and, in the Complainant's view, it has been used to send phishing emails which fraudulently purport to originate from the Complainant's legitimate entity Russell Stover Chocolates, LLC. According to the Complainant, these emails, originating from accounts@russellstoverllc.com, request the recipient(s) to update their accounts with new details (under the guise that Russell Stover is in the process of migrating to a new accounting system). The Complainant also notes that the above referred emails adopt a footer which reproduces the Russell Stover Chocolates, LLC name, address and official website URL.

The Registrar has revealed that the Respondent is a US entity named Second Second.

PARTIES CONTENTIONS

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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

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

(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 and is being used in bad faith.

1) Many panels have found that a disputed domain name is confusingly similar to a Complainant's trademark where the disputed domain name incorporates the Complainant's trademark in its entirety. This is the case at issue where the Complainant's registered trademark "RUSSELL STOVER" is fully included in the disputed domain name followed by the generic and descriptive term "LLC", which stands for the acronym for Limited Liability Company (see, between many others, CAC Case No. 104502 GEFCO v. Bart Millard). The Complainant's trademark is clearly recognizable within the disputed domain name and the addition of the above mentioned descriptive term does not prevent a finding of confusing similarity, on the contrary it is likely to increase the possibility of confusion amongst consumers. Finally, the gTLD ".com" of the disputed domain name has to be disregarded under the first element confusing similarity test, since it is a standard registration requirement (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition at section 1.11). In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant therefore succeeds on the first element of the Policy.

2) The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain name as it is not commonly known under the disputed domain name and was never authorized to use it by the Complainant. The Complainant also notes that the Respondent does not have trademark rights for 'russellstoverllc' or any similar term. Furthermore, the Complainant points out that the disputed domain name is not used for a bona fide activity, because the disputed domain name has been used to send phishing emails which fraudulently purport to originate from the Complainant's legitimate entity Russell Stover Chocolates, LLC. The Panel accepts that the Respondent's conduct, impersonating the Complainant's "RUSSELL STOVER" brand through a fraudulent email scheme, cannot constitute a bona fide offering of goods or services nor a legitimate non-commercial or fair use. The Respondent, in the absence of any response, has not shown any fact or element to justify prior rights or legitimate interests in the disputed domain name. The Complainant therefore succeeds also on the second element of the Policy.

3) Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the respondent has registered the disputed 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 the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Respondent registered the disputed domain name many years after the use and registration of the "RUSSELL STOVER" mark by the Complainant. In consideration of the reputation achieved by "RUSSELL STOVER" it is clear that the Respondent was surely aware of the Complainant trademark when it registered the domain name in dispute. Moreover, the Respondent appears to have attempted to benefit commercially from the appropriation of the "RUSSELL STOVER" mark in the disputed domain name. The use of the mark "RUSSELL STOVER", well-known in the chocolate sector, to send phishing emails which fraudulently purport to originate from the Complainant's legitimate entity Russell Stover Chocolates LLC, clearly indicates that the disputed domain name was chosen by the Respondent to take advantage of the Complainant´s mark reputation. This finding leads to the obvious conclusion that the disputed domain name has been registered in bad faith.

The Panel also finds that the evidence in this case clearly shows that the Respondent has sent phishing emails from an address that impersonates the Complainant. Previous panels have held that the use of a domain name for illegal activity, here claimed fraudulent impersonation of Complainant in phishing email, constitutes use in bad faith (see, between many others, WIPO Case No. D2024-2724, Cresset Administrative Services Corporation v. Sabrina Daniels). The Respondent has not participated in this case to explain its actions and so, based upon a preponderance of the available evidence, the Panel finds it highly likely that the Respondent registered and uses the disputed domain name in bad faith by disrupting the Complainant's business and by seeking commercial gain through confusion with the Complainant's trademark, per Paragraphs 4(b)(iii) and (iv), (see, between many others CAC Case No. 105344, LendingClub Bank, National Association v. Lennys Alvarez).

In consideration of the above, the Panel concludes that the Respondent registered and is using the disputed domain name in bad faith. The Complainant therefore succeeds also on the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **russellstoverllc.com**: Transferred

PANELLISTS

Name	**Guido Maffei**

DATE OF PANEL DECISION 2024-11-07

Publish the Decision