

ADMINISTRATIVE PANEL DECISION

Covestro Deutschland AG v. Kay Mone / KMN INC.

Case No. D2018-0145

1. The Parties

The Complainant is Covestro Deutschland AG of Leverkusen, Germany, represented by BPM Legal, Germany.

The Respondent is Kay Mone / KMN INC. of Abuja, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <covestro.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 24, 2018. On January 24, 2018, the Center transmitted, by email to the Registrar, a request for registrar verification in connection with the disputed domain name. On January 25, 2018, the Registrar transmitted, by email to the Center, its verification response which confirmed that the Respondent is listed as the registrant and provided the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), 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 January 29, 2018. In accordance with the Rules, paragraph 5, the Center set the due date for Response to February 18, 2018. The Respondent did not submit any response. Accordingly, the Center notified the parties on February 19, 2018 of the Respondent's default.

On March 1, 2018, the Center appointed Peter L. Michaelson as the sole panelist in this matter. 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

As reflected in the registration record for the disputed domain name in the public Whois database (a copy of that record appears in Annex 1 to the Complaint), the disputed domain name was registered on January 11, 2018 and will expire on January 11, 2019.

A. The Complainant's COVESTRO marks (collectively the "COVESTRO Marks")

As indicated in the Complaint, the Complainant owns several trademark registrations, including German and international registrations, for the term "COVESTRO" in block letters. The Complainant has provided, in Annex 5 to the Complaint, copies of publicly accessible records for these two registrations, the pertinent details of which are:

1. COVESTRO

International trademark registration: 1272950

Registered: May 15, 2015

This mark is registered for use in connection with: "Chemicals used in industry; unprocessed artificial resins; unprocessed plastics; adhesives used in industry" all in international class 1; "Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants, raw natural resins; metals in foil and powder form for painters, decorators, printers and artists" all in international class 2; "Rubber, gutta-percha, gum, mica; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; semi-finished polycarbonate plastic substances; flexible pipes, not of metal; extruded plastics in the form of boards and sheets for use in manufacture; extruded plastics in the form of rods for use in manufacture; plastic bars and plastic sheets" all in international class 17; "Non-metallic building and construction materials; plastic foils, sheets, rods, slabs, shaped sections and pipes as building and construction materials; gypsum; cement; cement slabs; fireclay; bitumen; translucent plastic slabs for building; coatings (building materials); non-metal tiles; plastic sheets for building; building timber; artificial stone; non-metal gutter pipes; plastic tube for building; plastic strip for building; building glass; binding agents for making stones; non-metallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings" all in international class 19; "Clothing, footwear, headgear" in international class 25; "Material treatment information; treatment [recycling] of chemicals; chemical treatment of textile; provision of information relating to chemical processing; extruding of plastics; moulding of synthetic products; fabric waterproofing; recycling of plastics; treatment of plastic materials to produce plastic mouldings; material treatment information; applying finishes to textiles; processing of chemicals; processing of rubber; processing of plastics; rental of chemical processing machines; vulcanization" all in international class 40; and "Scientific and technological services and research and design relating thereto; industrial analysis and research services" all in international class 42. This registration claims priority to the Complainant's German trademark registration 302015010554 noted immediately below.

2. COVESTRO

German trademark registration: 302015010554

Registered: March 3, 2015

This mark is registered for use with the goods and services, with minimal differences, recited in International trademark registration 1272950.

B. The Parties and their activities

The Complainant undertakes research, development and manufacture of polymers and is one of the world's largest entities serving the polymer marketplace. It operates approximately 30 production sites in Europe, Asia and the United States of America and has approximately 15,600 employees across all those facilities. The Complainant has a global market presence with relatively small facilities in some geographic areas which are designed for regional purposes and large-scale production plants situated in other areas for

servicing markets in larger geographic territories. The Complainant has been in existence since September 2015 and is a public corporation with its stock traded on the German DAX exchange.

The Complainant was spun out of Bayer AG, which itself is a large corporation serving the chemical and pharmaceutical industries and dates back to the 19th century. The Complainant's initial public offering received global press coverage, with copies of a small sample of the resulting articles appearing in Annex 4 to the Complaint.

From the time the disputed domain name was registered and continuing to the present, the name has not resolved to an active website. Instead, the name first resolved to a so-called "placeholder" webpage displaying, for all practical purposes, no content (a copy of this page appears in Annex 7 to the Complaint) and currently to a page that simply states:

"Account Suspended
This Account has been suspended.
Contact your hosting provider for more information."

5. Parties' Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar to its mark COVESTRO.

Specifically, the disputed domain name contains this mark in its entirety with an additional letter "s", and thus is nearly identical to the mark. This additional letter is insufficient to distinguish the disputed domain name from the mark.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that, for any of several reasons, the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy.

Specifically, the Respondent is not licensed or otherwise authorized by the Complainant to use its COVESTRO Marks.

Further, the Respondent has neither used nor made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Moreover, the Respondent is also not using the disputed domain name in connection with any legitimate noncommercial or fair use without intent for commercial gain. In that regard, since its registration, the disputed domain name has never resolved to any operational website at all.

Lastly, the Respondent has never been commonly known by any name or trade name that incorporates the term "COVESTRO" as that name is a coined word which the Complainant devised and is based on an amalgam of the terms "collaboration", "invest" and "strong".

(iii) Registered and Used in Bad Faith

The Complainant also contends that, for various reasons, the Respondent has registered and is using the disputed domain name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Specifically, the Respondent's intentional registration of the disputed domain name that is a typosquatted variation of the Complainant's mark COVESTRO evidences that the Respondent was well aware of the exclusive rights, goodwill and reputation which the Complainant possessed in its COVESTRO Marks. Yet, in spite of that knowledge, the Respondent registered the disputed domain name. To date, the Respondent has never used the disputed domain name to resolve to an operational website but has passively held it. Nevertheless, the disputed domain name provides the Respondent with an opportunity, which it may realize sometime in the future, to purposefully exploit the goodwill and reputation associated with those marks and, by so doing, disrupt the Complainant's business by diverting Internet users away from the Complainant's website and thus cause injury to the Complainant.

Therefore, under the present circumstances, there is no conceivable or possible scenario under which the Respondent's use of the disputed domain name would reflect good faith and not be illegitimate.

B. Respondent

In view of the lack of any Response, this administrative proceeding continued by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel decided this proceeding on the basis of the Complainant's undisputed factual allegations which the Panel finds are not inherently implausible.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's mark COVESTRO.

From a simple comparison of the disputed domain name to the Complainant's mark COVESTRO, no doubt exists that the disputed domain name is confusingly similar to it. The disputed domain name consists of a misspelled variant of the mark to which the generic Top-Level Domain ("gTLD") ".com" has been appended, with the addition of the "gTLD" being irrelevant in this case in assessing confusing similarity or identity under paragraph 4(a)(i) of the Policy and thus ignored.

It is now very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation to a mark is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. Here, the Respondent's misspelling of the Complainant's mark COVESTRO as "covesstro" (adding a second letter "s" to the mark) clearly resulted in such a minor variation. See, e.g., *ZB, N.A. dba Amegy Bank v. Above.com Domain Privacy / Host Master, Transure Enterprise Ltd*, WIPO Case No. D2017-1268; *SAP SE v. Lakshmi Reddy Bhumireddy and P. Hareesh*, WIPO Case No. D2017-0396; *Compagnie Générale des Etablissements Michelin v. Cameron Jackson*, WIPO Case No. D2016-2392; *Kumfs Brand Limited v. George*, WIPO Case No. D2016-1272; *Dubizzle Limited BVI v. Rana Anabtawi*, WIPO Case No. D2016-0843; *Chicago Mercantile Exchange Inc. and CME Group Inc. v. Domains By Proxy, LLC / Phupinder Gill*, WIPO Case No. D2015-1842; *Cummins Inc. v. Jamie Lent*, WIPO Case No. D2015-0188; *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, WIPO Case No. D2013-1687; *Forideas Pty Limited v. Movember Organization*, WIPO Case No. D2013-1385; *AlgaeCal Inc. v. AlgaeCal Fraud*, WIPO Case No. D2013-1248; *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106; *National Westminster Bank plc v. Steve Mart*, WIPO Case No. D2012-1711; *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *National Association of Realtors v. Hammerberg & Associates, Inc.*, WIPO Case No. D2012-0075; *Space Needle LLC v. Erik Olson*, WIPO Case No. D2011-0931; *Clearwire Legacy, LLC v. Leon Ganesh*, WIPO Case No. D2010-0148; and *Oakley, Inc. v. Kate Elsberry, Elsberry Castro*, WIPO Case No. D2009-1286.

Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim of rights or legitimate interests by the Respondent to the disputed domain name under paragraph 4(c) of the Policy.

The Complainant has never authorized the Respondent to utilize any of the Complainant's COVESTRO Marks and does not have any relationship, affiliation or connection whatsoever with the Respondent.

Further, with respect to paragraph 4(c)(i) of the Policy, the Respondent does not now use nor has it ever made any demonstrable preparations to use the disputed domain name to resolve to an operational website through which it presently does or will make a *bona fide* offering of any goods or services. Furthermore, as to paragraph 4(c)(iii) of the Policy, the name is not used in any manner that is either noncommercial or reflective of fair use whatsoever, let alone one that does not provide a potential for commercial gain. In that regard, since the date the Respondent registered the disputed domain name, it has passively held it without using it to resolve to an operational website.

Moreover, as to paragraph 4(c)(ii) of the Policy, the record is entirely devoid of any evidence which reflects that the Respondent is currently or has ever been commonly known by the disputed domain name or any of the Complainant's COVESTRO Marks. Given that the notoriety and consequently reputation that the Complainant has acquired since it first registered the COVESTRO mark on March 3, 2015 and started using its mark COVESTRO in September 2015 – the former being approximately three years prior to the date on which the Respondent registered the disputed domain name on January 11, 2018, the Respondent could not legitimately acquire such a public association or even an association with any mark similar to any of those of the Complainant — at least for the goods and services provided by the Complainant under any of its COVESTRO Marks — without interfering with the exclusive trademark rights of the Complainant. See, e.g., *Alstom v. Zahir Khan, Palki Event Inc.*, WIPO Case No. D2017-1124; *Compagnie Générale des Etablissements Michelin v. Cameron Jackson, supra*; *Philip Morris USA Inc. v. Daniele Kanai, iKiss LLC*, WIPO Case No. D2015-1527; *Valero Energy Corporation and Valero Marketing and Supply Company v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID; 62520014085963*, WIPO Case No. D2015-0787; *Chicago Mercantile Exchange Inc. and CME Group Inc. v. Domains By Proxy, LLC / Phupinder Gill, supra*; *Cummins Inc. v. Jamie Lent*; and *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen, supra*.

Consequently, the Respondent does not satisfy any of paragraphs 4(c)(i)-(iii) of the Policy and thus has no rights or legitimate interests in the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

The term COVESTRO was specifically coined by the Complainant as its mark and thus is unique only to it. Since the Complainant first acquired exclusive trademark rights in its mark COVESTRO approximately three years ago, the mark has acquired considerable goodwill and recognition in the Complainant's industry as a unique identifier of the Complainant and its goods and services.

Consequently, the Panel infers, particularly from the lack of any substantive response and the Respondent's very choice of the disputed domain name as a nearly identical, typosquatted version of the Complainant's mark COVESTRO that the Respondent was very well aware, at the time it registered the name, not only of the Complainant and its mark and the substantial reputation and goodwill which that mark acquired and the exclusive rights which the Complainant held in that mark but also of the significant potential of the name to confuse Internet users as to whether some association, affiliation or relationship existed between the Respondent's website and the Complainant – when, in fact, no such connection actually exists.

Thus, there is simply no question that the registration is abusive and the Respondent exhibited bad faith in doing so.

To date, the Respondent passively held the disputed domain name for a period of approximately two months from January 11, 2018 to the present. During that time, it never used the disputed domain name to resolve to an operational website. A two-month period of passive holding, in and of itself, may generally be too short to constitute bad faith use. However, other relevant factors, apart from just a short period of passive holding, are present here which, when all facts are viewed collectively, decidedly alter that result in favor of a finding of bad faith use.

It is inconceivable to the Panel that, given various characteristics of the mark COVESTRO, the Complainant's exclusive rights in that mark and the overwhelming importance of that mark to the Complainant, the Respondent would have any reason to register and then hold the disputed domain name other than to just wait until some future time arises when it could sell the name to the Complainant at its desired target price, one that in all likelihood far exceeds its costs of registration and would potentially maximize the pecuniary benefit to the Respondent. Due to the Complainant's exclusive trademark rights in the mark, the high degree of similarity (nearly identical nature) of the name to the mark and the absence of any license or other permission granted by the Complainant to the Respondent authorizing its use of the disputed domain name, it is rather unlikely, under a reasonable extrapolation of the current facts of record, that the Respondent would ever use the name in any manner that would not infringe the Complainant's rights and be legitimate.

Specifically, the mark COVESTRO, coined by the Complainant, is unique, distinctive and specifically conceived for and is used by the Complainant as its corporate name and brand. Since September 2015 when the Complainant became an independent entity, the Complainant, through its ensuing marketing and promotional efforts, successfully received considerable publicity under its mark, with the mark having garnered both substantial global recognition as the Complainant's trade and brand name and concomitant goodwill as a result. The mark forms the crux of the Complainant's identity. As the Complainant continues investing in marketing and promotional activities going forward, the importance and value of the mark to the Complainant, which itself is a rather large commercial enterprise, will only grow further as an increasingly crucial and valuable core asset of the Complainant.

Further, the Respondent has absolutely no connection or relationship with the Complainant or any of its goods and services.

Therefore, it stands to reason and so the Panel infers in the absence of any response, that the Respondent's passive holding is, in actuality, an abusive threat hanging over the head of the Complainant.

Accordingly, the Respondent's actions, when viewed under the totality of the circumstances present here, reflect bad faith use in violation of paragraphs 4(a)(iii) and 4(b)(i) of the Policy. For similar results where UDRP panels, having taken a similar comprehensive view, concluded the passive holding was but one component of broader-based conduct by respondents that collectively evinced bad faith use, see, *e.g.*, *Bayer AG v. Gulam Mustafa*, WIPO Case No. D2017-0820; and *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. D2002-0131.

Thus, the Panel concludes that the Complainant has provided sufficient evidence of its allegations, with respect to the disputed domain name to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant.

The disputed domain name <covestro.com> is to be transferred to the Complainant.

Peter L. Michaelson

Sole Panelist

Date: March 15, 2018