



'greenyourlab.org' dispute: a tale of two 'green labs'

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- Complainant My Green Lab and respondent Green Your Lab were both engaged in the 'green labs' movement
- The panel was satisfied that the respondent was using the domain name on a non-commercial basis and the overall facts were supportive of a claimed fair use for legitimate purposes
- The respondent appeared to have engaged in good faith in the legitimate activity of operating a non-commercial network under the name Green Your Lab

In a recent [decision](#) under the [Uniform Domain Name Dispute Resolution Policy](#) (UDRP) before WIPO, a panel denied the transfer of the domain name at issue, finding no indicia of cybersquatting, despite both parties being engaged in the 'green labs' movement and both using three word domain names containing the words 'green' and 'lab'.

Background

The complainant was My Green Lab Corp, a US-based non-profit corporation founded in 2013 and engaged in building a global culture of sustainability in science. It held a US trademark for MY GREEN LAB, which was registered in 2014 with a disclaimer regarding the absence of exclusive rights to use 'Green Lab'. It also registered its domain name 'mygreenlab.org' in 2013 and used it to redirect to its official website providing related resources and programmes.

The respondent, Green Your Lab, was a volunteer-run free network involved in the green labs movement, based in Belgium.

The domain name 'greenyourlab.org' was registered by the respondent in April 2020 and was associated with its website headed "Green Your Lab | Network of Sustainable Science and Green Lab Enthusiasts".

To be successful in a complaint under the UDRP, a complainant must satisfy the following three requirements under Paragraph 4(a):

- (a) The domain name registered by the respondent is identical, or confusingly similar, to a trademark or service mark in which the complainant has rights;
- (b) The respondent has no rights or legitimate interests in respect of the domain name; and
- (c) The domain name has been registered and is being used in bad faith.

Decision

Identity or confusing similarity

The complainant contended that the domain name incorporated the terms 'green' and 'lab', which constituted a dominant feature of its MY GREEN LAB mark. The respondent's substitution of the possessive adjective 'my' for the possessive adjective 'your' could not prevent a finding of confusing similarity between the domain name and its trademark. Such confusion was further reinforced by the content of the associated website as the respondent used similar colour schemes, topics and icons as those on the complainant's official website. The respondent argued that the complainant was not entitled to exclusive use of the disclaimed terms 'green lab' and the 'look and feel' of their websites did not appear similar.

The panel first pointed out that a finding of confusing similarity would still be possible despite the disclaimer associated with the trademark in question. The key question arose as to whether the complainant's trademark was recognisable by virtue of the identified similarities (ie, 'green' and 'lab'). According to the panel, there were significant differences between the trademark and the domain name since the two common terms were deployed in quite different manners and therefore perceived differently. The MY GREEN LAB trademark focused on the possessive adjective 'my', while the domain name focused on its first term 'green', which was actually used as a verb, meaning to make planet-friendly and sustainable. Furthermore, from a conceptual perspective, the 'lab' within the meaning of the domain name had not yet been made green, which was not the case for the 'lab' as referred to in the trademark. Consequently, based on a side-by-side comparison approach together with a conceptual analysis, the panel doubted that the incorporation of the terms 'green' and 'lab' in the domain name would be sufficient to give rise to a finding of confusing similarity. Since both parties referred to the content of the website associated with the domain name under the first limb, the panel also examined this and found that a degree of similarity between the two parties' sites was to be expected in this case given that they were both dedicated to the concept of 'green lab'. The panel finally highlighted that it was unnecessary to reach a definite conclusion under the first limb in light of its findings under the second and third limbs as detailed below.

Rights or legitimate interests

The complainant asserted that the respondent's founder became its ambassador in October 2020 and used its contact list in July 2021 to reach out to other members of the ambassador network to beta-test the respondent's website and network, misleadingly claiming an affiliation between the two organisations. Such use of the domain name to intentionally divert users away from the complainant's site to the respondent's competing site, obviously for commercial gain, could not give rise to any rights or legitimate interests in the domain name under the second limb. The respondent claimed that its website and networking platform were perfect examples of *bona fide* use and it was commonly known by the domain name by virtue of its Twitter page, which had been continuously used since 2019 and had over 1,000 followers at the time of filing of the complaint. It further highlighted that its website was run completely by volunteers with no fees charged and no sponsorship funding, so it was making a legitimate non-commercial use of the domain name. In particular, the respondent explained that its email to the complainant's contact list merely resulted from a miscommunication regarding the partnership between the parties and was not tied to any attempt to use the domain name in a misleading manner.

The panel considered that the complainant had made out a required *prima facie* case that the respondent lacked rights and legitimate interests in the domain name, which shifted the burden of proof under the second limb to the respondent. The panel first found that the respondent was indeed making *bona fide* use of the domain name under the circumstances, noting that its use of 'green lab' was descriptive and thus disclaimed in the complainant's trademark. The objectively perceived differences between the domain name and the trademark, as addressed under the first limb, further reduced the likelihood of confusion.

More importantly, based on the previous correspondence between the two parties, the respondent's action in seeking a potential non-commercial partnership in the area of the 'green labs' movement did not strike the panel as being the action of a typical cybersquatter. The panel then found that the respondent had been commonly known by the domain name, notably as a result of its Twitter account, '@GreenYourLab', which had been activated six months prior to the registration of the domain name and had attracted some 1,000 followers since then. In the panel's opinion, this sufficiently demonstrated that the respondent had built up an online existence as 'Green Your Lab' independently of the domain name and well before its registration. The panel also noted that the respondent had described itself as "Green Your Lab" on the WHOIS record of the domain name.

Finally, the panel was satisfied that the respondent was using the domain name on a non-commercial basis, and the overall facts of this case, such as the nature of the domain name (the risk of implied affiliation with the complainant's mark was quite low), the parties' previous correspondence and the genuine connection between the respondent's website content and the

domain name, were supportive of a claimed fair use for legitimate purposes and not a pretext for commercial gain. Consequently, the panel was of the view that the respondent had successfully rebutted the complainant's *prima facie* case and the second limb of the UDRP was not satisfied.

Bad faith

For the sake of completeness, the panel briefly examined the third limb regarding the respondent's registration and use of the domain name. The panel disagreed with the complainant's assertion that the respondent's actual knowledge of the complainant's trademark rights when registering the domain name was automatically indicative of bad faith in the present case, and was not convinced of the respondent's intent to target the complainant in an act of cybersquatting. The panel also found that the respondent appeared to have engaged in good faith in the legitimate activity of operating a non-commercial network under the name Green Your Lab. The third limb was therefore not satisfied.

Comment

In this 11-page decision, the panel provided a thorough and rigorous analysis of each requirement under the UDRP in light of the circumstances of this interesting case, notably with regard to the confusing similarity test under the first limb and the respondent's rights and legitimate interests in the domain name. Although the UDRP is designed for relatively straightforward cases, the circumstances may reflect a certain degree of complexity, requiring each party to carefully prepare their arguments and supporting evidence. In conclusion, the panel also underlined that whether or not the use of a domain name constituted infringement of a trademark within a certain jurisdiction was an issue beyond the scope of the UDRP. It is worth noting that trademark infringement and abusive registration of domain names within the meaning of the UDRP are not always the same thing, although there may be some conceptual overlap, and this is often overlooked by complainants.

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