

ADMINISTRATIVE PANEL DECISION

Antares Audio Technologies, LLC v. Komalpreet Singh
Case No. DCO2022-0097

1. The Parties

The Complainant is Antares Audio Technologies, LLC, United States of America (“United States”), represented by Coates IP, United States.

The Respondent is Komalpreet Singh, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 10, 2022. On November 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 11, 2022, 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 (“Unknown Respondent”) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 11, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 11, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on November 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2022. The Respondent sent informal emails to (or copied to) the Center on November 12, November 24, November 28, December 1 and December 5, 2022 but did not file a formal Response to the Complainant’s submissions.

The Center appointed Steven A. Maier as the sole panelist in this matter on December 23, 2022. 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 Complainant is a corporation headquartered in Santa Cruz, California, United States. It is a supplier of software for audio and music production. Its products include musical pitch correction software branded AUTO-TUNE which it has sold since 1996.

The Complainant is the owner of various registrations for the trademark AUTO-TUNE, including for example:

- United States trademark registration number 2996904 for the word mark AUTO-TUNE, registered on September 20, 2005
- India trademark registration number 4940175 for the word mark AUTO-TUNE, registered on April 9, 2021.

The disputed domain name was registered on May 23, 2022.

The disputed domain name has resolved to a website headed "AutoTunes" offering mobile ringtones to download, featuring "Punjabi", "Hollywood", and "Bollywood" ringtones among others and including third-party advertising links.

5. Parties' Contentions

A. Complainant

The Complainant submits that its AUTO-TUNE pitch correction software is famous and iconic in the music industry, having been pioneered by artists such as Cher and T-Pain in the late 1990s and early 2000s to create a robot-like vocal effect. The Complainant states that its software is now used by countless famous artists including Lady Gaga, Madonna, and Eminem, some of whom sit on the company's creative board.

The Complainant submits that its AUTO-TUNE YouTube channel has received over 2.2 million views since 2014 and that the product is mentioned in over 28 million videos. It exhibits a Google search against the term AUTO-TUNE which produces almost 2 billion results, the first 17 pages of which relate overwhelmingly to the Complainant.

The Complainant produces survey evidence of brand awareness of the AUTO-TUNE mark, being in excess of 70 per cent in each of the United States, Canada, and the United Kingdom. It also exhibits evidence of substantial media attention and coverage of the AUTO-TUNE product and phenomenon.

The Complainant submits that its AUTO-TUNE trademark has acquired vast goodwill as a result of the above matters and has gained the status of a famous trademark.

The Complainant submits that the disputed domain name is confusingly similar to its AUTO-TUNE trademark. It contends that the disputed domain name effectively reproduces that trademark, only omitting the hyphen and adding a letter "s".

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant states that it has never authorized the Respondent to use its AUTO-TUNE trademark, that the Respondent has no independent rights in that name and has not commonly been known by the disputed domain name. The Complainant further contends that the Respondent is making neither

bona fide commercial use nor legitimate noncommercial or fair use of the disputed domain name because it is using the disputed domain name to create a false connection with the Complainant in order to attract consumers to its commercial website.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. It contends that since the disputed domain name is almost identical to its famous AUTO-TUNE trademark there should be a presumption of bad-faith registration. The Complainant submits that its AUTO-TUNE mark is well-known in India and that it is inconceivable that the Respondent was unaware of it.

The Complainant provides evidence that, in addition to its website, the Respondent also operates a LinkedIn account under the name "AutoTunes", which contains a link to its website. According to screenshots of that LinkedIn account, the introductory section features the text "Antares Audio Technologies (Auto-Tune ®)" together with a stylized letter "A", which is used by the Complainant as a logo. The name "Antares Audio Technologies (Auto-Tune ®)" and the logo appear on four further occasions within the LinkedIn profile, under "Experience", "Sales", "Digital Marketing" and "Music Production". The Complainant contends that it is clear from the LinkedIn account that the Respondent is seeking to create a false affiliation with the Complainant.

The Complainant contends therefore that the Respondent is using the disputed domain name and deceptive media profiles to redirect consumers to its own website where it derives a commercial benefit from pay-per-click advertising.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent's informal email dated November 12, 2022 contained a link to its DMCA Policy and its email of November 24, 2022 made further reference to that link. In its email of November 28, 2022, it stated: "We have permanently closed autotunes.co website, so this issue should be cancelled asap." In its email of the following day, addressed to the Complainant and copied to the Center, it apologized for using the Complainant's trademarked name and stated that it had closed its website as soon as it became aware of this. The Respondent added that it had only used the disputed domain name for educational and entertainment purposes. Following a reply from the Complainant, the Respondent stated on December 1, 2022, that it had deleted the LinkedIn and all other social media accounts using the relevant name. On December 5, 2022, the Respondent requested the Center to terminate this proceeding on the basis that it had closed the relevant website and accounts and had never acted with bad intent.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of the registered trademark AUTO-TUNE.

The disputed domain name effectively incorporates that mark, but omitting the hyphen and including an additional letter "s".

In the view of the Panel, these differences do not prevent the Complainant's trademark from being recognizable within the disputed domain name and the Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a formal Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise – to the contrary, he indicated that he had closed the relevant website and related social media accounts. As discussed below, the Panel finds that the Respondent has used the disputed domain name falsely to imply an affiliation with the Complainant, which cannot constitute legitimate use of the disputed domain name. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel comments that, while the Complainant's trademark may be widely known, it is comprised of two "dictionary" or descriptive terms, namely "auto" and "tune" such that it is at least conceivable that a domain name could include the terms "auto" and "tunes" without necessarily impinging upon the Complainant's rights.

However, based on the totality of evidence including the Respondent's cancellation of his website and social media accounts, including the LinkedIn profile, which the Respondent does not seek substantively to explain, there can be no serious doubt that the Respondent has deliberately sought to misrepresent a connection between its "AutoTunes" ringtones business and the Complainant's AUTO-TUNE trademark. Noting also that that LinkedIn profile includes a link to the Respondent's website, the Panel can only conclude that the Respondent registered and has used the disputed domain name in the knowledge of the Complainant's trademark and with the intention of benefitting unfairly from the Complainant's goodwill attaching to that mark.

The Panel also accepts that the Respondent's website includes pay-per-click advertising from which the Respondent must be assumed to derive a revenue. The Panel finds in these circumstances that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

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, <autotunes.co>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: January 6, 2023