

ADMINISTRATIVE PANEL DECISION

SPAR International B.V. v. Chris Waldmann

Case No. D2022-2153

1. The Parties

The Complainant is SPAR International B.V., Netherlands, represented by Brand Enforcement Team 101 Domain, United States of America.

The Respondent is Chris Waldmann, Germany.

2. The Domain Name and Registrar

The disputed domain name <spar-international.site> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2022. On June 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 14, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 15, 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 June 21, 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 June 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 13, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on July 18, 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, SPAR International B.V., is a multinational food retailer and supplier. The Complainant was founded in 1932 and provides branding, supplies, support, and retail services for independently owned and operated food stores worldwide through their primary website, associated with the domain name <spar-international.com>, which has been registered on July 2, 1998.

The Complainant holds and invokes two registered trademarks:

- International figurative trademark, represented below, registered on November 28, 1963, under No. 276911 in classes 1, 2, 3, 4, 5, 8, 11, 16, 21, 29, 30, 31, 32, 33, and 34:



- SPAR, international trademark, registered on May 16, 1981, under No. 460654 in classes 3, 5, 21, 29, 30, 31, 32, 33, and 34.

The Disputed Domain Name has been registered on June 18, 2021.

The Disputed Domain Name does not resolve to an active website. However, the Complainant provides evidence that the Disputed Domain Name has been linked to an email address through which the email's signatory presented himself as "Sales Director Spar-International / Manager in Business and Development" with reference to the Complainant's primary domain name in the email footer. The email address was used in connection with purported online sales for furniture in exchange of a cash payment of EUR 10,000. In response to an abuse report, the registrar has suspended the service associated to the Disputed Domain Name.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be identical or confusingly similar to a trademark and trade name in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent is in no way affiliated with the Complainant, nor has the Respondent been authorized by the Complainant to use and register the Complainant's trademark, or to seek registration of any domain name incorporating said trademark. Also, according to the Complainant, the Respondent has not used the Disputed Domain Name in connection with a legitimate use as he has been using the Disputed Domain Name for spear phishing tactics.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent was aware of the Complainant when registering the Disputed Domain Name. The Complainant contends that the Respondent registered and uses the Disputed

Domain Name primarily for the purpose of disrupting the Complainant's business. The Complainant argues that the Respondent has been using the Disputed Domain Name to create confusion with the Complainant's trademark SPAR and for misleading the Complainant's customers into making payments for invalid services, thereby profiting from the Complainant's reputation and client relationships and tarnishing the Complainant's trademark.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (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 Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has established that there are trademarks in which it has rights. The Complainant's SPAR trademarks have been registered and used in various countries in connection to the Complainant's retail business.

The Disputed Domain Name incorporates the Complainant's SPAR trademark in its entirety, simply adding a hyphen and the term "international". Where the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms would not prevent a finding of confusing similarity under the first element (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel further observes that, with the addition of the descriptive term "international", the Disputed Domain Name is virtually identical to the Complainant's trade name, with the exception of the addition of a hyphen and the Top-Level Domain ("TLD"), a fact which the Panel has considered when assessing the second and third elements.

It is well established that the TLD, here ".site", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the

Complainant's SPAR trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Chris Waldmann". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant's SPAR trademark and adds the word "international", which can obviously be linked to the Complainant's trade name. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

The Panel finds no signs of a legitimate noncommercial or fair use of the Disputed Domain Name, as it is not linked to an active website and has been used for purported online sales of furniture via email, whereby the Respondent attempted to impersonate a Sales Director of the Complainant.

The Respondent had the opportunity to demonstrate his rights or legitimate interests, but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 website or location or of a product or service on the website or location.

In the present case, the Panel finds that it is inconceivable that the Respondent was unaware of the Complainant and its trademark rights when he registered the Disputed Domain Name. The Disputed

Domain Name includes the Complainant's distinctive trademark in its entirety and is nearly identical to the Complainant's trade name. In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

The Respondent has used the Disputed Domain Name in connection with emails trying to convince Internet users in making cash payments for the purported sale of furniture, while presenting himself as a Sales Director of the Complainant. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to an online location at the disputed domain name, for commercial gain by creating a likelihood of confusion with the Complainant's trademark.

In the circumstances of this case, the Panel finds that the use of the Disputed Domain Name for fraudulent activity is likely, e.g. by profiting of the likelihood of confusion with the Complainant's trademark for phishing and scamming activities through the sending of emails.

The fact that the Disputed Domain Name currently resolves to an inactive page does not prevent a finding of bad faith.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element of the Policy.

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, <spar-international.site> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: July 28, 2022