

ADMINISTRATIVE PANEL DECISION

Space Exploration Technologies Corp. v. Registration Private, Domains By Proxy, LLC / Jose de Jesus Aguirre Campos, StarGroup
Case No. D2022-2331

1. The Parties

The Complainant is Space Exploration Technologies Corp. dba SpaceX, United States of America (“United States”), represented by Polsinelli PC Law firm, United States.

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Jose de Jesus Aguirre Campos, StarGroup, Mexico, represented by De la Torre Abogados, S.C., Mexico.

2. The Domain Name and Registrar

The disputed domain name <starlinkmx.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2022. On June 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 28, 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 29, 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 July 1, 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 July 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2022. On July 25, 2022, the Respondent requested an extension to file a Response. On July 26, 2022, the Response due date was subsequently extended to July 31, 2022.

The Response was filed with the Center on July 31, 2022. On September 5, 2022, the Respondent filed an unsolicited supplemental filing.

The Center appointed Antony Gold, Mauricio Jalife Daher, and Richard W. Page as panelists in this matter on September 7, 2022. The Panel finds that it was properly constituted. Each member of 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 personal-named Respondent, Jose de Jesus Aguirre Campos, is the chairperson of the board of StarGroup, a group of companies based in Mexico, established 60 years ago, which provides telecommunication and entertainment services.

Star Group owns (whether directly or through ownership by the personal-named Respondent, the distinction not being material for the purpose of these proceedings) a family of STAR-related marks including STAR TV, STAR GO, STAR LINE and STAR GROUP, which are used for the provision of the Respondent's various services.

The Respondent has also registered two marks for STARLINK¹. The first of these, Mexican trade mark, registration number 1588979, in class 38 (telecommunications) was applied for in August, 2015, and registered in November, 2015. This mark, referred to below as the "first STARLINK mark", appears to have been the subject of successful challenge by the Complainant and has been revoked on grounds connected with the manner in which services were claimed in the application. The Respondent's second STARLINK mark, Mexican trade mark, registration number, 1602036, was also applied for in August, 2015, and was registered in January, 2016, in class 41, in respect of, amongst other services, online entertainment services. This mark is still valid and subsisting.

The Complainant was established in 2002 and provides services in many countries in connection with aerospace manufacture, transportation and communications under the brand SPACEX. Since on or about early 2020, it has used the trade mark STARLINK in connection with its international communication services, particularly satellite Internet broadband services. The earliest registered of the Complainant's trade marks for STARLINK would appear to be European Union Trade Mark, registration number 17133621, which was applied for on August 21, 2017, and registered on May 15, 2018, in classes 9, 38 and 42. The Complainant additionally owns and operates the domain name <starlink.com>, which resolves to a website providing information about its satellite Internet services.

In November 2017, legal representatives of the Complainant contacted the Respondent's advisors, initially not naming their client, to enquire whether the Respondent would be willing to sell its STAR LINE mark and the first STARLINK mark. After the Respondent expressed unease at the possibility that the prospective purchaser might engage in competing services, the Complainant's advisors disclosed their client's identity in an email to the Respondent dated May 3, 2018. They also explained that "SPACEX is dedicated to [...] fabricate, and launch rockets [...] to outer space to evolve the space technology with the final purpose of people being able to habitat other planets in the future" and that therefore "[...] the services offered by SPACEX are not competing by the ones offered by STARGROUP²". After various exchanges of emails, the Respondent notified the Complainant's advisors, on June 20, 2018, that it did not wish to sell its marks as it intended to continue using them.

The disputed domain name was registered on June 8, 2018. As at the date of filing the Complaint, it resolved to a website, branded as "StarLink", offering for sale various packages of satellite data for homes

¹ The registered marks appear to be for STAR LINK rather than STARLINK. However, nothing turns on this distinction and the Panel has adopted the form used by both parties.

² Translation from the original Spanish provided by the Respondent.

without direct access to the Internet. It presently resolves to a webpage containing a notice that the account for the disputed domain name has been suspended.

5. Parties' Contentions

A. Complainant

The Complainant refers to its portfolio of STARLINK marks, full details of one of its marks having been set out above, and says that the disputed domain name is identical or confusingly similar to its marks. The disputed domain name incorporates the entirety of the Complainant's mark and adds the geographic descriptor "mx", this being the country code for Mexico. The addition of this term does not dispel the confusing similarity of the disputed domain name to the Complainant's mark.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent's sole interest in the disputed domain name is to abuse its similarity with the Complainant's corporate domain name, that is <starlink.com>, for the purposes of engaging in a spoofing scheme to defraud. It is quite clear that the Respondent acquired the disputed domain name for the sole purpose of exploiting the Complainant's rights in its STARLINK trade marks in order to create a false and misleading association with the Complainant and in an attempt to impersonate it. The purposefully deceptive disputed domain name relies on and profits from consumer confusion or mistake. Nothing in the record reflects the Respondent's use of the disputed domain name in connection with a *bona fide* offering of goods and services; see *TVS Motor Company Limited v. Vistaprint Technologies Limited*, WIPO Case No. [DCO2014-0007](#). Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name, nor is it commonly known by the disputed domain name.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. Over several years the Complainant has attempted to stop the Respondent's spoofing scheme and to prevent the Respondent's continued use of its STARLINK mark in Mexico. To that end, the Mexican Institute of Industrial Property issued a decision, affirmed by the Supreme Court of Justice of the Nation in June 2022, cancelling the first STARLINK mark on the grounds that there was a likelihood of confusion with the Complainant's registrations for STARLINK in Mexico.

The Respondent's bad faith is palpable. It is clear that the Respondent was well aware of the Complainant and had its STARLINK marks firmly in mind when registering the disputed domain name. The record reveals that the Respondent's sole motivation in relation to the registration and use of the disputed name was to take advantage of the Complainant's trade mark rights. The purposefully deceptive disputed domain name profits from consumer confusion or identity. There is no doubt that many Internet users attempting to visit the Complainant's website have ended up on the webpage set up by the Respondent. The disputed domain name redirects to a fraudulent website offering goods and services under the STARLINK mark to scam Internet users into believing that the Respondent purportedly provides the Complainant's goods and services using the Complainant's STARLINK trade mark. The Respondent is marking a non-legitimate use of the disputed domain name with intent for commercial gain to misleadingly divert consumers from the Complainant's official website.

B. Respondent

The Respondent says it registered the disputed domain name before the Complainant has secured a trade mark for STARLINK in any country. The Respondent has registered many STAR marks including STAR GROUP, STAR LINE and STAR GO. The Respondent's STARLINK brand is likewise derived from the same STAR source and its STARLINK trade marks were granted in November 2015, and January 2016, respectively. As the Respondent has been the owner of a STARLINK trade mark in respect of online services since 2015, it acquired the right to register the disputed domain name as a means of exploiting its trade marks. It is correct that the disputed domain name is confusingly similar to the Complainant's STARLINK marks, but that is because it is also confusingly similar to the Respondent's own STARLINK mark

which was obtained over 2 years before the earliest of the Complainant's marks. The letters "mx" in the disputed domain name were added not to cause confusion but to denote that the Respondent's online services provided through the website at the disputed domain name are rendered by StarGroup in Mexico.

The Respondent says it has rights and legitimate interests in the disputed domain name. It acquired its trade mark rights well before the Complainant and the disputed domain name has been registered and used as a *bona fide* means of exploiting those rights.

The Respondent says lastly that the disputed domain name was not registered and is not being used in bad faith. There is not a single circumstance to suggest that the Respondent registered the disputed domain name with a view to selling it to the Complainant. Indeed, the evidence shows that the Complainant has been trying to acquire the Respondent's first STARLINK mark since 2017, as is evident from emails exchanged between the parties and their advisors. In fact, the disputed domain name was registered by the Respondent with the sole purpose of using it to exploit its STARLINK brands. Additionally, in the trade mark infringement proceedings brought by the Respondent against the Complainant, the Complainant filed a brief in September, 2021, asserting that its STARLINK brand had not yet entered the Mexican market. This makes it impossible for the Respondent to have acted with the intention of creating confusion with regard to the non-existent services of the Complainant in Mexico. Moreover, the Complainant's statement that the first STARLINK mark was invalidated because of a likelihood of confusion with one of the Complainant's STARLINK marks is untrue; in fact, it was invalidated on grounds that the application for the mark failed to provide a specific breakdown of the telecommunication services it claimed. As at the date of registration of the disputed domain name, the Respondent did not know of the Complainant's intended activities in respect of the provision of online services in Mexico, nor is there any evidence which might suggest otherwise. The disputed domain name was therefore registered in good faith.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

A. The Respondent's unsolicited supplemental filing

On September 5, 2022, the Respondent made an unsolicited supplemental filing, comprising a copy of an acknowledgement from the Federal Court of Administrative Justice in Mexico of proceedings filed by the Respondent on August 4, 2022 (that is after the date of the Respondent's Response in these proceedings) in connection with its ongoing trade mark dispute with the Complainant.

Whilst the Rules make no express provision for supplemental filings by the parties to a complaint, section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") explains that "Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel" and "panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some 'exceptional' circumstance)".

The Panel subscribes to the view that unsolicited supplemental filings are to be discouraged. Moreover, the Respondent's supplemental filing is, at best, of limited relevance to the issues the Panel is required to decide. It is accordingly not admitted to the record.

B. Identical or Confusingly Similar

The information provided by the Complainant in relation to its trade mark registrations has established its rights in its STARLINK trade mark.

For the purpose of determining whether the disputed domain name is identical or confusingly similar to its mark, the generic Top-Level Domain ("gTLD") ".com" is disregarded as this is a technical requirement of registration. The disputed domain name comprises the Complainant's STARLINK trade mark in full, coupled with the letters "mx". The addition of this term does not impact on an assessment of whether the disputed domain name is confusingly similar to the Complainant's trade mark. As explained at section 1.8 of the [WIPO Overview 3.0](#): "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

The Complainant's STARLINK mark is clearly recognizable within the disputed domain name and the Panel accordingly finds that it is confusingly similar to a trade mark in which the Complainant has rights.

C. Rights or Legitimate Interests / Registration and Use in Bad Faith

In the circumstances of this Complaint, essentially the same issues arise for consideration in relation to the second and third elements and they are appropriately considered together; see, for example, *Snowflake, Inc. v. Ezra Silverman*, WIPO Case No. [DIO2020-0007](#).

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarized briefly: (i) if the respondent has been using the domain name in connection with a *bona fide* offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name.

It is therefore necessary to consider whether the Respondent has been using the disputed domain name in connection with a *bona fide* offering of goods and services. In this respect, whilst the Panel notes that the disputed domain name presently resolves to a webpage indicating that the Respondent's account has been suspended, neither party has asserted that this is an intentional or permanent state of affairs so far as the Respondent's intentions for the disputed domain name are concerned. In any case, the Panel considers the Respondent's use of the disputed domain name as at the date of filing of the Complaint. In determining whether the Respondent's offering of goods and services is *bona fide*, the central issue which arises for consideration is whether the Respondent registered the disputed domain name in order to exploit or otherwise take advantage of the Complainant's rights in its STARLINK mark.

The Complainant did not submit any evidence that, as at the date of registration of the disputed domain name in June 2018, the Respondent either knew or had reason to believe that the Complainant had any intentions to register or use STARLINK, whether in Mexico or anywhere else. Moreover, the Complainant itself has acknowledged that it only began widespread use of STARLINK in 2020. However, the Respondent has disclosed correspondence between the parties and their advisors which establishes that the Complainant approached the Respondent anonymously with a view to acquiring the Respondent's earlier STARLINK mark in November 2017 and that discussions continued, on and off, for some months. In May 2018, the Respondent was informed of the Complainant's identity and interest to use a STARLINK mark. However, the Respondent did not know the nature of the services the Complainant intended to supply under a STARLINK mark, but the Complainant informed the Respondent that SPACEX business includes "launch[ing] rockets to outer space to evolve the space technology with the final purpose of people being able to habitat other planets in the future". On June 8, 2018, the disputed domain name was registered by

the Respondent. On June 20, 2018, the Respondent notified the Complainant that it did not wish to sell its mark as it intended to continue to use it in connection with its business.

The disputed domain name was registered by the Respondent with an awareness of the Complainant's intentions to use STARLINK. However, in order for the Complainant to succeed in establishing that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services, the Complainant also needs to establish the Respondent registered the disputed domain name in order to target the Complainant's actual or prospective trade mark rights; see, for example, *2XT Tecnologia e Comercio de Informática Ltda v. Lilian Liely Firmino*, WIPO Case No. [D2019-0113](#) and *Técnica Industrial Oswaldo Filizola Ltda. v. Whois Agent (804833973), Whois Privacy Protection Service, Inc. / Raphael Barduche*, WIPO Case No. [D2020-1987](#). In assessing the Respondent's conduct in this respect, it is material to have regard to the following factors.

First, the Respondent has a family of STAR marks, each of which is derived from the "Star" component of its corporate group name. These include, for example, STAR GO and STAR TV, which denote separate services provided by the Respondent for Internet and paid-for television services respectively. Moreover, the Panel notes that these services are provided through separate websites and domain names³. Accordingly, the factual background is consistent with the Respondent's assertion that it intended to use STARLINK as a brand name for another service offering.

Second, the fact that the Respondent had applied for its STARLINK marks in November 2015, establishes that its plans to develop a STARLINK-branded business long pre-date the Complainant's intentions to use the same mark. Moreover, the Respondent has used the disputed domain name for the purpose for which its marks were registered, particularly the first STARLINK mark, which was registered for telecommunications. Irrespective of the fact that this mark has now been invalidated, it remains relevant for the purpose of establishing the Respondent's intentions as at the date it was applied for. It is accordingly appreciably more probable than not that the Respondent registered the disputed domain name in order to fulfill those plans rather than opportunistically to confound or exploit the Complainant's plans.

Finally, whilst both the parties' STARLINK brands are used in connection with the provision of satellite Internet services, the record shows that the Complainant had not disclosed to the Respondent the use to which it intended to put its STARLINK brand prior to its registration of the disputed domain name. Moreover, the Panel also notes, from the cached copies of the Respondent's website at the Internet archive known as the Wayback Machine, that the Respondent's website was promoting the sale of packages of satellite data in early 2019, that is at least a year before the Complainant's public launch of its proposed STARLINK services. Furthermore, the use made of the disputed domain name is consistent with the class of services (telecommunications) for which the first STARLINK mark was registered. The record does not therefore suggest that the Respondent has tailored its use of STARLINK in order to provide a service competing with that of the Complainant.

Having regard to the above considerations, there is no evidence before the Panel to impugn the Respondent's contention that it has been using the disputed domain name in conjunction with a *bona fide* offering of goods and services and without any intention to target the Complainant's services and STARLINK brand.

Whilst, as at the date of registration of the disputed domain name the Respondent was aware of the Complainant's interest in using STARLINK as a brand (albeit not the use to which it intended to put it), the record does not indicate that the Respondent's motive was to undermine or take advantage of the Complainant's plans. Moreover, the disputed domain name is comprised of the dictionary terms "star" and

³ Established by the Panel via a Google search. See section 4.8 of the [WIPO Overview 3.0](#): "Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision". The Panel has also visited the archived copies of the website to which the disputed domain name resolves at the Wayback Machine.

“link” and domain names with these characteristics, in the absence of any intent to target by the registrant, would generally be considered available to register; see *Greenfort Partnerschaft von Rechtsanwälten mbB v. CheapYellowPages.com*, WIPO Case No. [D2016-0796](#). Furthermore, the Respondent is the holder of a group of STAR-formative trademarks that predate the Complainant’s rights, which reinforces the Panel’s opinion that the addition of the disputed domain name was a natural addition to the Respondent’s business plans, as opposed to an intent to target the Complainant. The Respondent was therefore entitled to register the disputed domain name, which combined its own registered mark with the country code designation for Mexico, the country in which its services are provided and in which it is based. In these circumstances, the Complainant has failed to establish that the Respondent’s registration of the disputed domain name, notwithstanding its limited knowledge of the Complainant’s intention to use STARLINK in the future, was in bad faith. Nor, for the reasons discussed above in relation to the second element, has the Complainant established that the Respondent has used the disputed domain name in bad faith.

Accordingly, the Panel finds that the Complainant has failed to establish both the second and third elements under the Policy, namely that the Respondent has no rights or legitimate interests in the disputed domain name and that the disputed domain name was registered and used in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Antony Gold/

Antony Gold

Presiding Panelist

/Mauricio Jalife Daher/

Mauricio Jalife Daher

Panelist

/Richard W. Page/

Richard W. Page

Panelist

Date: September 21, 2022