

ADMINISTRATIVE PANEL DECISION

IDT Corporation v. Satas Gintautas

Case No. D2022-3231

1. The Parties

The Complainant is IDT Corporation, United States of America (“United States”), represented by Holland & Knight LLP, United States.

The Respondent is Satas Gintautas, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <idt-card.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 August 19, 2022. On August 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 1, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 September 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 6, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on October 17, 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. Further procedural considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding takes place with due expedition.

As at the date of this Decision, Ukraine is subject to an international conflict that may impact service on the Respondent of documents related to these proceedings. It is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceedings should continue. The prime consideration in this respect is whether the Panel can be satisfied that the proceedings have come to the attention of the Respondent.

The contact details provided by the Registrar for the Respondent, which will have been supplied to the Registrar by the Respondent, comprise a postal address in Ukraine, together with an email address. The Notification of Complaint was sent by courier service to the Respondent's physical address as well as to the email contact address provided by the Registrar and to three other email addresses associated with the disputed domain name. It was not possible to effect delivery of the Complaint to the Respondent's physical address as the Respondent was stated to be absent. Moreover, a bounce-back was received in respect of one of the email addresses associated with the disputed domain name, indicating that it been rejected by the Respondent's mail server.

However, no such bounce-back was received in respect of the three other email addresses to which the Complaint was sent, and specifically there was no rejection in respect of the contact email address for the Respondent provided by the Registrar. The Panel is therefore satisfied that this means of Notification of Complaint has been successful and that the proceedings have come to the attention of the Respondent via its email contact address as well as (most likely) two of the email addresses associated with the disputed domain name.

The Respondent has not given any indication to the Center that it requires additional time to consider the Complaint and serve a Response, whether due to the conflict in Ukraine or for any other reason. Moreover, as discussed below, the Panel has no doubt that the Respondent registered and is using the disputed domain name in bad faith.

The Panel also notes that the Complainant has specified in the Complainant that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, PDR Ltd. d/b/a PublicDomainRegistry.com, is in India.

The Panel concludes that the Respondent has been given a fair opportunity to present its case, and, having regard to the requirement under the Rules that the administrative proceeding takes place with due expedition, the Panel proceeds to determine the Complaint.

5. Factual Background

The Complainant is an international provider of a range of communications and payment services. These include a mobile phone app which can be used for the international transfer of funds as well as various financial services. It also promotes an "Awards2Go"-branded business-to-business, incentive, loyalty and customer appreciation gift card.

The Complainant's services are provided under the brand IDT and the Complainant owns several trade mark registrations to protect this mark including, by way of example, United States service mark, registration number 2,118,811, for IDT in classes 38 and 42, registered on December 9, 1997.

The disputed domain name was registered on January 31, 2022. It resolves to a website headed "IDT Card" underneath which is the claim "#1 rated store service and no monthly fee". Further subject headings include "Commission for withdrawing funds from a virtual card" and "Financial company IDT – improving for you!". Other content includes the claim that "New features have been introduced, such as google pay and balance replenishment from card to card, as well as Instant verification". Another section of the website states; "We greatly value the trust you place in IDT CARD SERVICES IRELAND LIMITED. Please rest assured that our focus and commitment during this challenging time remains on serving you". IDT Card Services Ireland Limited is a subsidiary of the Complainant. A link on the home page of the website invites visitors to open an account and a further section of the website invites Internet users to apply for an "IDT Prepaid Card".

6. Parties' Contentions

A. Complainant

The Complainant refers to its trade mark registrations for IDT, full particulars of one of these registrations having been set out above, and says that the disputed domain name is identical or confusingly similar to its marks.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized the Respondent to use or register its IDT mark, as part of a domain name or otherwise, and it is not affiliated, connected or otherwise associated with the Respondent. The use which the Respondent is making of the disputed domain name does not appear legitimate. Its purpose appears to be to lure consumers, who will have been attracted to the Respondent's website by its false affiliation with the Complainant, into providing sensitive, financial, or personal information. There is no other plausible explanation for the Respondent's decision to use the Complainant's marks in its website.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. The Respondent has no valid reason for registering the disputed domain name other than to confuse customers and draw them to its website. By its use of the disputed domain name, the Respondent is intentionally seeking to attract, for financial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of its website. The Respondent has fraudulently affiliated itself with the Complainant by referring to the mark IDT and depicting services similar to those offered by the Complainant. Moreover, the fact that the Respondent is not offering any genuine services is apparent from the fact that the contents of its "About" page have been copied directly from a third party website. Additionally, the contact address shown on the Respondent's website is that of the office of a global accounting firm, with an address in Dublin, Ireland. This does not accord with the address of record for the Respondent supplied by the Registrar and is therefore also indicative of bad faith.

B. Respondent

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

7. Discussion and Findings

Paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the panel shall draw such inferences therefrom as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves 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;
- (ii) the Respondent has no rights or legitimate interests with respect to 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 provided evidence of its trade and service mark registrations for IDT, full details of one of these registrations having been set out above. It has thereby established its rights in this mark.

When considering whether the disputed domain is confusingly similar to the Complainant's service mark, the generic Top-Level Domain ("gTLD") ".com" is typically disregarded as this is a technical requirement of registration. The only differences between the disputed domain name and the Complainant's service mark are the addition of a hyphen (which is of negligible, if any, significance for the purpose of the comparison) and the term "card". This additional term does not prevent the disputed domain name from being found to be confusingly similar to the Complainant's mark. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[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 IDT mark is readily recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Policy sets out at paragraph 4(c) examples of circumstances, without limitation, by which a respondent may demonstrate rights or legitimate interests in a disputed domain name. These are, in summary: (i) if the respondent has been using the domain name in connection with a *bona fide* offering of goods and services or has made demonstrable preparations to do so; (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. If a complainant establishes a *prima facie* case that a respondent lacks rights or a legitimate interest in a domain name, the burden of production shifts to the respondent; see section 2.1 of the [WIPO Overview 3.0](#).

Examination of the Respondent's website suggests that, to the extent that it is possible to understand the specific services the Respondent is purportedly offering, they appear very similar to those of the Complainant and, indeed, expressly claim to be offered by a subsidiary of the Complainant with its head office in Ireland.

Additionally, the Complainant has drawn attention to various features of the Respondent's website which suggest that it is a dummy website. Among these are that certain portions of the Respondent's website content have been copied verbatim from the website of an unrelated Swiss-based banking institution. Moreover, the Respondent (located in Ukraine) has provided, as its website contact address, an address in Ireland which is the registered office of the Complainant's Irish subsidiary.¹

¹ This was established by the Panel via a search on Google. As explained at 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 fact that the Respondent has chosen not to respond to a strong *prima facie* case by the Complainant that its website is fake, in the circumstances of this Complaint, provides further affirmation that the Respondent's website does not comprise a *bona fide* offer of goods and services. Whilst there is no direct evidence that the Respondent is using its website for fraudulent purposes, its form and content, particularly the invitation to Internet users to open an account, is consistent with a widely used form of phishing and there is no other plausible explanation as to why it would have established a website in this form. In any event, the specific references to the Complainant's Irish subsidiary affirm the Respondent's intent to confuse Internet users into believing that it is associated with the Complainant for the purpose of taking advantage of them. See section 2.13.1 of the [WIPO Overview 3.0](#) which explains that "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent" and *Hanai Capital, LLC v. Domain Administrator, See PrivacyGuardian.org / Nike Nolan*, WIPO Case No. [D2020-0846](#).

There is no evidence that the Respondent has been commonly known by the disputed domain name and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. Lastly, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant's first IDT service mark was trade mark was registered in 1997, many years prior to the Respondent's registration of the disputed domain name in 2022. In the light of the fact that, following registration, the Respondent has used the disputed domain name to resolve to a website which purports to be operated by a subsidiary of the Complainant, it is reasonable to infer that the Respondent was aware of the Complainant and its IDT mark as at the date of its registration of the disputed domain name and that it was registered in order to take unfair advantage of the Complainant's mark. It is well-established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration amounts to bad faith; see, for example, *Accor, SoLuxury HMC v. Huxianfeng*, WIPO Case No. [D2014-1326](#). The Panel therefore finds the Respondent's registration of the disputed domain name to have been in bad faith.

The use to which the Respondent has put the disputed domain name is similarly in bad faith in that it claims to be operated by a subsidiary of the Complainant and to provide services similar to those offered by the Complainant. The belief of Internet users that the Respondent's website is operated by the Complainant or its subsidiary will be reinforced because of the confusing similarity between the disputed domain name and the Complainant's IDT mark. Whilst the Complainant's suspicions of fraudulent intent on the part of the Respondent are likely well founded, it is not necessary for the Complainant to establish that the Respondent's website has been used for phishing. As explained at section 3.1.1 of the [WIPO Overview 3.0](#); "If on the other hand circumstances indicate that the respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark, panels will find bad faith on the part of the respondent". See also *OANDA Corporation v. Privacy Service Provided by Withheld for Privacy ehf / RICHARD WILLIAMS*, WIPO Case No. [DCC2022-0006](#).

For the above reasons, the Respondent's use of the disputed domain name falls within the circumstance of bad faith set out at paragraph 4(b)(iv) of the Policy in that it has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website.

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

8. 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 <idt-card.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: October 31, 2022