

ADMINISTRATIVE PANEL DECISION

Asurion, LLC v. mahmuad mustafa, phone physician
Case No. D2022-3460

1. The Parties

Complainant is Asurion, LLC, United States of America (“United States”), represented by Adams and Reese LLP, United States.

Respondent is mahmuad mustafa, phone physician, United States.

2. The Domain Name and Registrar

The disputed domain name <asurionfileclaim.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 17, 2022. On September 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 19, 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 (Contact Privacy Inc. Customer 7151571251, Canada) and contact information in the Complaint. The Center sent an email communication to Complainant on September 23, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 27, 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 Respondent of the Complaint, and the proceedings commenced on October 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2022. Respondent did not submit any response before that due date. Accordingly, the Center notified Respondent’s default on October 24, 2022. Respondent provided an informal email inquiry on November 1, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on November 1, 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

Complainant is Asurion, LLC, a privately held United States company founded in 1994 that provides insurance, technology, mobile phone replacement, repair, configuration, technical support, IT consultation, and related products and services. Complainant offers its goods and services through its official <asurion.com> and <phoneclaim.com> websites. Complainant owns valid and subsisting registrations for the ASURION trademark in numerous countries, including the trademark for ASURION (Reg. No. 2698459 registered on March 18, 2003) in the United States, with the earliest priority dating back to March 12, 2001.

Respondent registered the disputed domain name on September 9, 2022. At the time this Complaint was filed, the disputed domain name failed to resolve to any website content.

5. Parties' Contentions

A. Complainant

Complainant asserts ownership of the ASURION trademark and has adduced evidence of trademark registrations in numerous countries around the world including the United States, with earliest priority dating back to March 12, 2001. The disputed domain name is confusingly similar to Complainant's ASURION trademark, according to Complainant, because it consists of Complainant's ASURION trademark in its entirety, followed by the generic words "file a claim." "In fact, because Complainant's business involves the provision of insurance and replacement services for phones and other wireless devices, and Complainant's customers routinely 'file an Asurion claim' ... the addition of 'file a claim' ... actually serves to increase the confusing similarity rather than differentiate the [disputed] domain name."

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based: on the lack of evidence that Respondent is known by the disputed domain name; the fact that Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, or in a legitimate noncommercial or fair manner; and the lack of any license or authorization between Complainant and Respondent.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: the fame of the ASURION trademark; Respondent's passive holding of the disputed domain name; Respondent's failure to reply to Complainant's cease and desist correspondence; and the argument that Respondent appears to operate a competing mobile phone repair business and thus, Respondent likely registered the disputed domain name to disrupt Complainant's business and drive traffic to Respondent's own website.

B. Respondent

Respondent did not file a timely response to Complainant's contentions. As discussed below, Respondent sent an informal response to the Center on November 1, 2022 after the deadline for Respondent to respond had passed and this Panel had been appointed. Respondent's informal response read, "What is this? I'm not even sure what's going on. Why are you disputing a domain I own? I paid for it on google I own it what is the problem?"

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- (i) The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- (ii) 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.

Panels typically treat a respondent's submission of a so-called "informal response" (merely making unsupported conclusory statements and/or failing to specifically address the case merits as they relate to the three UDRP elements, e.g., simply asserting that the case "has no merit" and demanding that it be dismissed) in a similar manner as a respondent default. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. Indeed, the Panel views Respondent's submissions, asserting that they were unaware of why this Complaint against them had been filed and that they "paid for [the disputed domain name] on google" as akin to a respondent default.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See [WIPO Overview 3.0](#), sections 4.2 and 4.3; See also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the ASURION trademark has been registered in numerous countries including the United States with priority dating back to March 12, 2001. Thus, the Panel finds that Complainant's rights in the ASURION trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's ASURION trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant's ASURION trademark because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the trademark is contained in its entirety within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar ..."). In regards to gTLDs, such as ".com" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The combination with the terms “file a claim” does not prevent a finding of confusing similarity between Complainant’s ASURION trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.8 (Additional terms “whether descriptive, geographical, pejorative, meaningless, or otherwise” do not prevent a finding of confusing similarity under the first element”); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) (“Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant’s [ATT trademark]”); *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) (“[T]he addition of the letters ‘hbg’ to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark.”). Indeed, the Panel concurs with Complainant that the additional terms “file a claim” does not dispel the confusing similarity between Complainant’s ASURION and the disputed domain name. See *Asurion Corp. v. Domain Park Limited*, WIPO Case No. [D2007-1633](#) (discussing the word “claim” as relevant to Complainant’s services and as used in the disputed domain name <asurionclaim.com>).

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. WIPO Overview, section 2.1.

It is evident that Respondent, identified by Whois data for the disputed domain name as mahmuad mustafa, phone physician, is not commonly known by the disputed domain name or Complainant’s ASURION trademark. Passively holding a domain name, which does not resolve to any website content or is not otherwise put to some legitimate use, in and of itself does not constitute a *bona fide* offering of goods or services. *Philip Morris USA Inc. v. Gabriel Hall*, WIPO Case No. [D2015-1779](#).

In this case, as indicated in the original Complaint, the disputed domain name time was passively held by Respondent and Complainant asserts that one day prior to the filing of the Complaint, the disputed domain name redirected “to a website displaying an unauthorized copy of Complainant’s official employee login page”, as part of an illegal phishing scheme. The disputed domain name remains passively held and did not direct to any website content, as indicated in the Amended Complaint. Either way, neither use constitutes a right or legitimate interest in respect to the disputed domain name under the second element of the Policy. See, e.g., [WIPO Overview 3.0](#), section 2.13. (UDRP panels have categorically held that use of a domain name for illegal activity - including website phishing and the impersonation of the complainant and other types of fraud - can never confer rights or legitimate interests on a respondent.)

In view of the foregoing, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- (i) Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent’s documented out of pocket costs directly related to the disputed domain name;

- (ii) Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct;
- (iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

Where a complainant's trademark is widely known, including in a particular industry, or highly specific, and respondents cannot credibly claim to have been unaware of complainant, UDRP panels have inferred that respondents knew, or should have known, that their registration would be identical or confusingly similar to a complainant's trademark. Furthermore, where parties are both located in the United States and the complainant has obtained a federal trademark registration pre-dating a respondent's domain name registration, UDRP panels have applied the concept of constructive notice, subject to the strength or distinctiveness of the complainant's trademark, or circumstances that corroborate respondent's awareness of the complainant's trademark. [WIPO Overview 3.0](#), section 3.2.2.

In this Panel's view, when the disputed domain name was registered on September 9, 2022, Respondent had either actual knowledge of Complainant or constructive knowledge of Complainant's pre-existing rights in Complainant's ASURION trademark under the United States law. See, e.g., *Champion Broadcasting System, Inc. v. Nokta Internet Technologies*, WIPO Case No. [D2006-0128](#) (applying the principle of constructive notice where both parties are located in the United States). Indeed, circumstances in this case corroborate Respondent's awareness of Complainant and Complainant's ASURION trademark, including, that Respondent appears to operate a "phone physician" business in the same industry as Complainant, and the disputed domain name incorporates Complainant's identical ASURION trademark coupled with the phrase "file a claim" in direct reference to services offered by Complainant, as well as perhaps Respondent.

In addition, passively holding a domain name that does not resolve to any website content does not prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.3. Where a domain name is being passively held, as alleged in this case, bad faith registration and use exists based upon: (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit any response or offer any credible evidence of rights or legitimate interests; (iii) the respondent's concealing its identity or use of false contact details; and (iv) the implausibility of any good faith use which the domain name may be put. See *Id.* See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) ("A remedy can be obtained under the Policy only if those circumstances show that Respondent's passive holding amounts to acting in bad faith.").

To that end, the Panel acknowledges multiple prior panel determinations under the Policy cited by Complainant concluding that Complainant's ASURION trademark is "well known" See, e.g., *Asurion, LLC v. Cindy Willis*, WIPO Case No. [D2018-2643](#); *Asurion LLC v. ORM Ltd/Contact Privacy Inc. d/b/a ContactPrivacy.com*, WIPO Case No. [D2016-0578](#). In the Panel's view, these same prior panel determinations, coupled with Complainant's extensive portfolio of worldwide trademark registrations for Complainant's ASURION trademark, make any good-faith use of the disputed domain name by Respondent relatively implausible. Furthermore, the Panel acknowledges Respondent's failure to offer any credible evidence of rights or legitimate interests. And finally, the Panel acknowledges Respondent's either intentional or default use of a proxy registration service, thus concealing its identity from Complainant.

Where it appears that a respondent employs a proxy service, or selects a registrar that applies default proxy services, merely to avoid being contacted by a complainant or notified of a UDRP proceeding filed against it, UDRP panels tend to find that this supports an inference of bad faith. [WIPO Overview 3.0](#), section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement

efforts by a legitimate complainant demonstrates bad faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct). Here, it is evident that Respondent has either intentionally employed a proxy registration service or intentionally selected a registrar that offers default proxy registration services to conceal its identity in conjunction with Respondent's passive holding of the disputed domain name.

Finally, the Panel further concludes that failure by Respondent to answer Complainant's cease and desist letter "suggests that Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith." See *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. [D2000-1460](#) (internal citations omitted). See also *Spyros Michopoulos S.A. v. John Talias, ToJo Enterprises*, WIPO Case No. [D2008-1003](#). Furthermore, the failure of Respondent to answer this Complaint or take any serious part in the present proceedings, in the view of the Panel, is another indication of bad faith on the part of Respondent. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

In view of the foregoing, the Panel concludes that Complainant has established the third 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 <asurionfileclaim.com> be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: November 15, 2022