

ADMINISTRATIVE PANEL DECISION

CA, INC. v. Archit Gupta, SYmantec Dlgital LLC
Case No. D2022-3661

1. The Parties

The Complainant is CA, INC., United States of America, represented by Adsero IP, United States of America (“United States”, “US” or “U.S.”).

The Respondent is Archit Gupta, SYmantec Dlgital LLC, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 1, 2022. On October 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Redacted For Privacy by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 4, 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 October 5, 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 October 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 2, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on November 8, 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 owns various trademark registrations for the mark SYMANTEC in the United States, including:

- US Registration No 1,654,777, registered on August 27, 1991 in class 9,
- US Registration No 1,683,688, registered on April 21, 1992 in class 9,
- US Registration No 2,964,259, registered on June 28, 2005 in class 25 and
- US Registration No 4,358,366, registered on June 25, 2013 in classes 9, 16, 35, 36, 42 and 45 (Annex 4 to the Complaint).

The Complainant has used the trademark SYMANTEC in commerce in connection with its cybersecurity software and other services for many years (Annex 5 to the Complaint).

The disputed domain name was registered on January 5, 2022 (Annex 1 to the Complaint).

The disputed domain name was used actively to address a website providing *inter alia* services with regard to “eCommerce Development”, “App Development”, “Digital Marketing” and “Website Development” (Annex 3 to the Complaint).

5. Parties’ Contentions

A. Complainant

The Complainant is a US based software company and well-known provider of industry-leading cyber security solutions, including endpoint security, web security, and information security solutions. The Complainant, through its authorized licensees, began using its SYMANTEC mark at least as early as November 1985 in connection with its cybersecurity software and services. The Complainant is the owner of numerous United States trademarks and registrations for its SYMANTEC mark.

The Complainant widely uses the SYMANTEC mark in its marketing and advertising materials, including various social media sites.

The disputed domain name incorporates the entirety of the Complainant’s trademark, intentionally trading on the goodwill of the Complainant’s mark to attract Internet users looking for the Complainant’s cybersecurity software and services. Furthermore, the disputed domain name includes the addition of the descriptive term “digital.” The addition of the term “digital” heightens confusion because it implies a connection with the Complainant’s SYMANTEC mark and the cybersecurity services the Complainant provides under the SYMANTEC mark. Therefore, the disputed domain name is confusingly similar to the SYMANTEC mark in which the Complainant has rights.

The Respondent is not a licensee of the Complainant nor is the Respondent otherwise authorized to use the Complainant’s SYMANTEC mark for any purpose. Furthermore, the Respondent is not commonly known as “Symantec Digital.” Moreover, the Respondent has no legitimate interest in the disputed domain name because it appears the Respondent does not offer any *bona fide* goods or services via the disputed domain name, including the Respondent’s purported online web development services. Hence, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Respondent registered the disputed domain name decades after the Complainant's first use of the SYMANTEC Mark in commerce, and the website to which the disputed domain name resolves offers services related to those of the Complainant. The Respondent was fully aware of the Complainant and its mark SYMANTEC and its reputation for cybersecurity services and used the Complainant's trademark to attract users to its own website.

Moreover, the Respondent has used the disputed domain name in bad faith, since the disputed domain name and the website it resolves to use the SYMANTEC Mark to mislead Internet users to believe that the website is associated, endorsed, and/or affiliated with the Complainant. The Respondent intentionally trades on the fame and goodwill of the Complainant's trademark to attract internet users looking for the Complainant's cybersecurity services and then offers services directly related to the Complainant's cybersecurity services.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove 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 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 submitted evidence, which incontestably and conclusively establishes rights in the trademark SYMANTEC.

The disputed domain name is confusingly similar to the Complainant's registered trademark SYMANTEC since it entirely contains this distinctive mark and only adds the word "digital".

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)").

Finally, it has also long been held that generic Top-Level-Domains ("gTLDs") are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with

relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's distinctive mark in its entirety together with the term "digital", cannot be considered fair as these falsely suggest an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Noting the above and all of the evidence put forward by the Complainant in the Complaint, as well as the Complainant's contentions that the Respondent has no rights or legitimate interests in the disputed domain names, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademark SYMANTEC in a domain name or in any other manner as well as the fact that the Respondent has not rebutted these allegations, it is undeniable for this Panel that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights in and is the owner of the distinctive U.S. registered trademark SYMANTEC. The SYMANTEC mark is a registered trademark since 1991 and has been used extensively in the course of trade for years by the Complainant.

It is inconceivable for this Panel that the Respondent registered or has used the disputed domain name without knowledge of the Complainant's rights in the SYMANTEC mark, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's distinctive trademark SYMANTEC entirely.

Moreover, the disputed domain name contains the term "digital", which in fact even strengthens the impression that the Respondent must have known the mark SYMANTEC when registering the disputed domain name, since the suffix "digital" refers to a relevant business and service of the Complainant, which is providing industry cyber security solutions, including endpoint security, web security, and information security solutions.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The disputed domain name moreover was actively used in bad faith: the disputed domain name resolved to a website where the Respondent offered services with regard to "Web Development", "App Development", "eCommerce Development" and "Digital Marketing". Thereby the Respondent attracted Internet users to a website supposedly providing SYMANTEC services by the Complainant, obviously for commercial gain.

Moreover, Panels have consistently found that the mere registration of a domain name incorporating a distinctive mark in its entirety plus a descriptive term (as in the present case) by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

This Panel also concludes bad faith use, putting emphasis on the following:

- the Complainant's trademark SYMANTEC is distinctive and well-known in the security sector;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name incorporates the Complainant's trademark in its entirety, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site);
- the disputed domain name moreover contains the suffix "digital" which refers to a service and business of the Complainant; and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) 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 <symantecdigital.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: November 22, 2022