

ADMINISTRATIVE PANEL DECISION

Stiles Machinery, Inc. v. Michael B Loyd
Case No. D2022-3726

1. The Parties

Complainant is Stiles Machinery, Inc., United States of America (“United States” or “U.S.”), represented by Nyemaster Goode, P.C., United States.

Respondent is Michael B Loyd, United States.

2. The Domain Name and Registrar

The Disputed Domain Name <stilesmachinery.org> 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 6, 2022. On October 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 6, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on October 7, 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 October 11, 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 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 2, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 3, 2022.

The Center appointed Douglas M. Isenberg 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

Complainant states that it is “a leading provider of a wide range of machinery and technology for woodworking, plastics, advanced materials and other products”; that it “has been in the business of providing advanced manufacturing solutions” for more than 50 years; and that it “assists customers in industries such as aerospace, transportation, alternative energy, architecture, furniture, and retail”.

Complainant states, and provides documentation in support thereof, that it is the registrant of “several” registrations for the mark STILES in the United States, including U.S. Reg. Nos. 1,243,926 (registered June 28, 1983); and 1,243,413 (registered June 28, 1983) (the “STILES Trademark”). Complainant also states that it “promotes its goods and services and conducts significant business through its website located at [www.stilesmachinery.com]”.

The Disputed Domain Name was created on August 19, 2022. According to the Complaint and documentation provided in support thereof, Respondent uses the Disputed Domain Name in connection with a website that “mirror[s] the format and content of Complainant’s website [www.stilesmachinery.com], including marks, artwork, pictures, and written description” and that Respondent uses the Disputed Domain Name “to send email falsely claiming to be Complainant”.

Complainant further states that it contacted the hosting provider for the Disputed Domain Name, which “immediately suspended Respondent’s services”.

5. Parties’ Contentions

A. Complainant

Complainant contends, in relevant part, as follows:

- The Disputed Domain Name is confusingly similar to the STILES Trademark because “[t]he dominant portion of [<stilesmachinery.org>] is STILES, which is identical to Complainant’s STILES mark”; “[t]he ‘machinery’ portion of [<stilesmachinery.org>] is descriptive of the goods and services, which relate to machinery” and “plays no source-identifying function and does not prevent a finding of confusing similarity”; and “[t]he ‘.org’ portion of [<stilesmachinery.org>] also plays no source-identifying function and should be disregarded when analyzing confusing similarity”.
- Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, *inter alia*, “Respondent has no connection with or business relationship with Complainant”; “Complainant has not authorized, licensed, or otherwise permitted Respondent to use Complainant’s STILES mark or to register [<stilesmachinery.org>]; “[t]here is no evidence Respondent is commonly known by the name ‘Stiles Machinery’ or any name similar to it”; and “Respondent has used the subject domain name for commercial gain with the intent to mislead by defrauding and diverting Complainant’s customers and by tarnishing the STILES mark”.

- The Disputed Domain Name was registered and is being used in bad faith because, *inter alia*, “Respondent’s use of [<stilesmachinery.org>] to impersonate Complainant through a mirrored website and spoofing email are strong evidence of Respondent’s bad faith”; and “Respondent clearly acted in bad faith in adopting and using [<stilesmachinery.org>] to attempt to wrongfully profit from the business Complainant has built”.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Pursuant to the Policy, Complainant is required to prove the presence of each of the following three elements to obtain the relief it has requested: (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark 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. Policy, paragraph 4(a).

A. Identical or Confusingly Similar

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the STILES Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the STILES Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (*i.e.*, “stilesmachinery”) because “[t]he applicable Top-Level Domain (‘TLD’) in a domain name (*e.g.*, ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.1.

As set forth in section 1.7 of [WIPO Overview 3.0](#): “in 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 to that mark for purposes of UDRP standing.” Further, as set forth in section 1.8 of [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.”

Here, the Disputed Domain Name incorporates the entirety of the STILES Trademark. The addition of the word “machinery” does not prevent a finding of confusing similarity between the trademark and the Disputed Domain Name.

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

B. Rights or Legitimate Interests

Complainant has argued that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, *inter alia*, “Respondent has no connection with or business relationship with Complainant”; “Complainant has not authorized, licensed, or otherwise permitted Respondent to use Complainant’s STILES mark or to register [<stilesmachinery.org>]”; “[t]here is no evidence Respondent is commonly known by the name ‘Stiles Machinery’ or any name similar to it”; and “Respondent has used the subject domain name for commercial gain with the intent to mislead by defrauding and diverting Complainant’s customers and by tarnishing the STILES mark”.

[WIPO Overview 3.0](#), section 2.1, states: “[w]hile 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.”

The Panel finds that Complainant has established its *prima facie* case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Whether a domain name is registered and used in bad faith for purposes of the Policy may be determined by evaluating four (non-exhaustive) factors set forth in the Policy: (i) circumstances indicating that the registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s 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 registrant’s website or location or of a product or service on the registrant’s website or location. Policy, paragraph 4(b).

Using the Disputed Domain Name in connection with a website that appears to be a website for Complainant is “likely fraudulent” and “indicates an intent to deceive or, at a minimum, act in bad faith with the intent for commercial gain”. *DocuSign, Inc. v. Traffic CPMiPV, Maria Carter*, WIPO Case No. [D2010-0344](#). See also, e.g., *Emu (Aus) Pty Ltd. and Emu Ridge Holdings Pty Ltd. v. Antonia Deinert*, WIPO Case No. [D2010-1390](#) (“a reasonable person who visited the Respondent’s website was likely to be misled in relation to the source, sponsorship, affiliation, or endorsement of the website and the products purportedly made available for online sale on the website”). Moreover, the construction of the disputed domain name, combining the descriptive term “machinery” to the STILES mark, affirms Respondent’s awareness of and intent to target Complainant, while also misleading Internet users via the confusingly similar Disputed Domain Name and content that exacerbates the false sense of association to Complainant.

Further, by using the Disputed Domain Name to send emails impersonating Complainant, Respondent has engaged in a phishing scam that amounts to bad faith pursuant to paragraphs 4(b)(iii) and 4(b)(iv) of the Policy. As set forth in [WIPO Overview 3.0](#), section 3.1.4, “the use of a domain name for per se illegitimate activity such as... phishing... is manifestly considered evidence of bad faith”. And as set forth in [WIPO Overview 3.0](#), section 3.4, using a Disputed Domain Name for “phishing” especially where “the respondent’s use of the domain name [is] to send deceptive emails” for purposes such as “to solicit payment of fraudulent invoices by the complainant’s actual or prospective customers” constitutes bad faith. See also, e.g., *Kimley-Horn and Associates, Inc. v. Abraham Hashim*, WIPO Case No. [DCO2019-0017](#) (finding bad faith where respondent “posed as two of Complainant’s actual employees in order to send phishing emails to one of Complainant’s clients in an effort to obtain payment on an allegedly outstanding invoice”).

Accordingly, the Panel finds that Complainant has proven 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 <stilesmachinery.org> be transferred to Complainant.

/Douglas M. Isenberg/

Douglas M. Isenberg

Sole Panelist

Date: November 18, 2022