

## **ADMINISTRATIVE PANEL DECISION**

Spotify AB v. Privacy Service Provided by Wihtheld for Privacy ehf/Akkounte Botte, Botte Accounting LLC  
Case No. DAC2022-0001

### **1. The Parties**

The Complainant is Spotify AB, Sweden, represented by Wilson Sonsini Goodrich & Rosati, United States.

The Respondent is Privacy Service Provided by Wihtheld for Privacy ehf, Iceland /Akkounte Botte, Botte Accounting LLC, Germany.

### **2. The Domain Name and Registrar**

The disputed domain name <spotify.ac> (“Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 14, 2022. On January 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 17, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 19, 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 amendment to the Complaint on January 19, 2022.

The Center verified that the Complaint together with the amendment to the Complaint, satisfied the formal requirements of the .AC Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .AC Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .AC 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 January 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2022. The Respondent did not file a Response and the Center notified the Respondent’s default to the parties on February 10, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on February 14, 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.

The Respondent sent an email communication on February 17, 2022.

#### **4. Factual Background**

The Complainant is a Swedish corporation that since 2008 has operated a streaming music platform under a trade mark consisting of the coined word “spotify” (the “SPOTIFY Mark”). The Complainant has more than 380 million monthly active users of its services across 180 countries and its app is one of the most downloaded apps in the world. The Complainant has since 2006 operated a website at “www.spotify.com” (the “Complainant’s Website”).

The Complainant is the owner of trade mark registrations for the SPOTIFY Mark in numerous jurisdictions including a United States registration for the SPOTIFY Mark registered on January 13, 2009, with a date of first use in commerce on August 8, 2006 (registration number 3,561,218).

The Domain Name <spotify.ac> was registered on January 16, 2019. It currently resolves to an Internet site (the “Respondent’s Website”) which closely resembles the Complainant’s Website, including the presence of the SPOTIFY Mark and the Complainant’s logo. It purports to offer a music streaming service known as “Spotify Premium” or “Spotify Upgrade” and invites Internet users to purchase the service or to log-in with their Spotify account details.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant’s SPOTIFY Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and/or is being used in bad faith.

The Complainant is the owner of the SPOTIFY Mark having registered the SPOTIFY Mark in numerous jurisdictions including the United States.

The Domain Name consists of the SPOTIFY Mark in its entirety with the addition of country code Top-Level Domain (“ccTLD”) “.ac”. The Domain Name is hence identical or confusingly similar to the Complainant’s SPOTIFY Mark.

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known as the Domain Name, nor does the Respondent have any authorization from the Complainant to register the Domain Name. The Respondent is using the Domain Name to divert Internet traffic to the Respondent’s Website for commercial purposes. The Respondent’s Website, through its use of the Complainant’s names and logo, intentionally misleads consumers into thinking that the Respondent is connected to the Complainant and is offering a service related to the Complainant’s Spotify service. It is well established that the use of a domain name in this matter does not constitute a *bona fide* offering of goods or services. This constitutes *prima facie* evidence of no rights or legitimate interests.

The Domain Name was registered and is being used in bad faith. The Domain Name was registered with the Complainant in mind as it fully incorporates the Complainant’s inherently distinctive SPOTIFY Mark and

resolves to a website that copies the look and feel of the Complainant's Website and purports to offer the upgrades to the Complainant's service. It is the clear and obvious intention of the Respondent to attract consumers to its website under the misimpression that it is the Complainant's Website and to profit from this confusion. The Respondent's conduct amounts to registration and use of the Domain Name in bad faith.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions. The Respondent sent an informal communication on February 17, 2022 saying:

"Hello there,

I was only notified of this a while ago, what is required from my end.

Regards,

Akkounte."

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the SPOTIFY Mark, having registrations for the SPOTIFY Mark as a trade mark in various jurisdictions including the United States.

The Domain Name consists of the SPOTIFY Mark, with the addition of the ccTLD ".ac". Discounting the ccTLD as a necessary part of a domain name the Domain Name is identical to the Complainant's SPOTIFY Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### **B. Rights or Legitimate Interests**

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue." (Policy, paragraph 4(c)).

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the SPOTIFY Mark or a mark similar to the SPOTIFY Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name. There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a legitimate noncommercial use.

The Respondent uses the Domain Name to operate a website that falsely impersonates the Complainant and purports to offer some form of music streaming service, both under the Complainant's SPOTIFY Mark and in direct competition with the Complainant's well-known service. The Respondent's use of the Domain Name in this manner does not, on the face of it, amount to use for a *bona fide* offering of goods and services or a legitimate fair use.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had the opportunity to put on evidence of its rights or legitimate interests, including submissions as to why its conduct amounts to a right or legitimate interest in the Domain Name under the Policy. In the absence of such a Response, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

### **C. Registered or Used in Bad Faith**

For the purposes of paragraph 4(a)(iii) the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration or use of a domain name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has 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 trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Respondent has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 Respondent's website or location or of a product or service on the Respondent's website or location. (Policy, paragraph 4(b)).

The Panel finds on balance that it is likely that the Respondent was aware of the Complainant and its reputation in the SPOTIFY Mark at the time the Domain Name was registered in 2019. The Domain Name resolves to a website that reproduces the SPOTIFY Mark, the Complainant's logo and the look and feel of the Complainant's Website. The Respondent does not provide, nor is it apparent to the Panel, any reason why the Domain Name was registered other than by reference to the Complainant. The registration of the Domain Name in awareness of the SPOTIFY Mark and in the absence of rights or legitimate interests amounts to registration in bad faith.

The Respondent's Website purports to offer some form of music streaming service both in direct competition with the Complainant and under the Complainant's well-known and coined mark. Given that the Respondent has offered no plausible explanation for the registration of the Domain Name, the Panel finds that that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users

to its website by creating a likelihood of confusion with the SPOTIFY Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. As such, the Panel finds that the Domain Name is being used in bad faith.

The Panel, while noting that the Policy only requires that a complainant show that a respondent registered or subsequently used the domain name at issue in bad faith, finds that the Respondent has registered and used the Domain Name 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 Domain Name <spotify.ac> be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: February 24, 2022