

## **ADMINISTRATIVE PANEL DECISION**

Space Exploration Technologies Corp. v. Matthew Leyvas, ViTech, LLC, Tim Wagner, LightWave Technical Consulting  
Case No. D2023-0945

### **1. The Parties**

The Complainant is Space Exploration Technologies Corp. dba SpaceX, United States of America (“United States”), represented by Polsinelli PC Law firm, United States.

The Respondents are Matthew Leyvas, ViTech, LLC, United States, and Tim Wagner, LightWave Technical Consulting, United States.

### **2. The Domain Names and Registrars**

The disputed domain name <starlinkaz.com> is registered with Google LLC.

The disputed domain names <arizonastarlink.com>, <starlinkpayson.com>, <starlinkphoenix.com>, <starlinkriorico.com>, <starlinksonoita.com>, <starlinktubac.com>, and <starlinkvail.com> are registered with GoDaddy.com, LLC.

Hereinafter, <starlinkaz.com>, <arizonastarlink.com>, <starlinkpayson.com>, <starlinkphoenix.com>, <starlinkriorico.com>, <starlinksonoita.com>, <starlinktubac.com>, and <starlinkvail.com> will be referred to collectively as the “Disputed Domain Names”. Google LLC and GoDaddy.com, LLC will be referred to collectively as the “Registrars”.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 2, 2023. On March 3, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the Disputed Domain Names. On March 4, 2023, and March 6, 2023, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondents (Registration Private Contact Privacy Inc. Customer 7151571251; and Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 7, 2023, providing the multiple registrants and contact information disclosed by the Registrar, and inviting the Complainant to submit either an amended Complaint or a separate complaint. The Complainant filed an amended Complaint on March 11, 2023, including a consolidation request.

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 Respondents of the Complaint, and the proceedings commenced on March 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 2, 2023. The Respondents sent several emails from March 13, 2023, to April 4, 2023, but did not submit a formal response. On April 3, the Center informed the Parties that it would proceed to Panel Appointment. On April 13, 2023, the Respondents filed a late Response. The Panel has decided to accept the late Response pursuant to its discretion.

The Center appointed Lynda M. Braun as the sole panelist in this matter on April 19, 2023. 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**

Established in 2002, the Complainant is a leading aerospace manufacturer, space transportation, and communications company worldwide. Since at least as early as 2020, the Complainant has used and continues to use STARLINK as a trademark in connection with its communication services in the United States and in jurisdictions worldwide. Through extensive sales and advertising and because of the high quality of its products and services, the Complainant has generated substantial goodwill and customer recognition in the STARLINK trademark. Moreover, the Complainant owns the domain name <starlink.com> that resolves to the Complainant’s website at “www.starlink.com”.

The Complainant owns and has continuously used the STARLINK trademark in commerce for several years and owns trademark registrations in the United States and the European Union, among numerous others worldwide. The aforementioned trademarks are: STARLINK, United States Trademark Registration No. 6,329,104, registered on April 20, 2021, in International Class 9; and STARLINK, European Union Trademark Registration No. 17133621, registered on May 15, 2018, in International Classes 9, 38, and 42 (hereinafter collectively referred to as the “STARLINK Mark”).

The Disputed Domain Names were registered on the following dates: The Disputed Domain Name <starlinkaz.com> was registered on June 8, 2022; the remaining Disputed Domain Names, <arizonastarlink.com>, <starlinkpayson.com>, <starlinkphoenix.com>, <starlinkriorico.com>, <starlinksonoita.com>, <starlinktubac.com>, and <starlinkvail.com> were registered on October 7, 2022. The Respondents are not affiliated with the Complainant and registered the Disputed Domain Names without the Complainant’s knowledge or consent.

On October 18, 2022, counsel for the Complainant sent to one of the Respondents a cease-and-desist letter requesting that it cease using the STARLINK Mark and any domain names incorporating the Complainant’s trademarks, and among other things, transfer the Disputed Domain Names to the Complainant. The Respondent Tim Wagner responded, confirming ownership and/or common control of the Disputed Domain Names and stated that the Disputed Domain Names provide the Complainant’s customers a way to find a professional installation company with more than 20 years of experience in information technology.

#### **5. Parties’ Contentions**

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

The following are the Complainant’s contentions:

- the Disputed Domain Names are confusingly similar to the Complainant's STARLINK Mark.
- the Respondents have no rights or legitimate interests in respect of the Disputed Domain Names and registered the Disputed Domain Names to impersonate the Complainant's <starlink.com> domain name.
- the Disputed Domain Names were registered and are being used in bad faith.
- the Complainant seeks the transfer of the Disputed Domain Names from the Respondents to the Complainant in accordance with paragraph 4(i) of the Policy.

## B. Respondents

The following are the Respondents' contentions:

- the Respondent Tim Wagner was a participant in the Complainant's Affiliate Program and if accepted, the Respondents would be allowed to market the STARLINK service.
- in anticipation of joining the program, the Respondents purchased the Disputed Domain Names.
- the Complainant did not accept the Respondents' program application and the Complainant requested that the Respondents transfer the Disputed Domain Names without reimbursement.

## 6. Discussion and Findings

### 6.1 Primary Issue: Consolidation of Multiple Domain Name Disputes

The Complainant has requested that the Panel allow consolidation of multiple domain name disputes in this proceeding. Although there is different contact information for each of the Disputed Domain Names, the Complainant finds that common control is being exercised over the Disputed Domain Names and the websites to which the Disputed Domain Names resolve. "[C]onsolidation of multiple domain name disputes under paragraph 3(c) or 10(e) of the Rules may be appropriate, even where differently named domain name registrants are involved, where the particular circumstances of a given case indicate that common control is being exercised over the disputed domain names or the websites to which the domain names resolve." *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#). See also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2

Specifically, seven of the Disputed Domain Names – <starlinksonoita.com>, <starlinktubac.com>, <starlinkriorico.com>, <starlinkpayson.com>, <starlinkphoenix.com>, <arizonastarlink.com>, and <starlinkvail.com> – resolve to the <starlinkaz.com> Disputed Domain Name. Various panels have held that common control may exist where "the domain names at issue point to nearly identical web pages" or resolve to the same website. See *General Electric Company v. Marketing Total S.A*, WIPO Case No. [D2007-1834](#). See also *Sherwood Tractor Inc. v. Nathan Pruss / Tyler Toney, Bruno's Powersports*, WIPO Case No. [D2018-2337](#) (consolidation is fair and equitable where the disputed domain names use similar addresses and "currently redirect to the same website.") For example, the Disputed Domain Names consist of similar naming patterns, as they use the trademark STARLINK followed or preceded by the name or abbreviation for the State of Arizona, or a location in the State of Arizona or neighboring Colorado.

Moreover, consolidation is appropriate when the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario. [WIPO Overview 3.0](#), section 4.11.2. Further, consolidation would allow all of the domain name disputes to be heard and resolved in a single proceeding when they each arise out of the same set of facts and law. Consolidation promotes the shared interests of the parties.

The Panel concludes that the criteria set out above have been met and therefore, has accepted consolidation in the present administrative proceeding. Doing so promotes the shared interests of the parties in avoiding unnecessary duplication of time, effort and expense, and generally furthers the fundamental objectives of the Policy. In addition, in the Panel's view under the circumstances present here, consolidation will not unfairly favor or prejudice any party.

Accordingly, this Panel, giving regard to all relevant circumstances, concludes that the consolidation of the multiple domain name disputes asserted by the Complainant against the Respondents is consistent with the Policy and Rules, and comports with prior relevant UDRP decisions in this area. The Panel will now proceed to a decision on the merits.

## 6.2 Substantive Issues

In order for the Complainant to prevail and have the Disputed Domain Names transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- The Disputed Domain Names are confusingly similar to the trademarks in which the Complainant has rights;
- The Respondents have no rights or legitimate interests in respect of the Disputed Domain Names;
- The Disputed Domain Names were registered and are being used in bad faith; and

The Complainant seeks the transfer of the Disputed Domain Names from the Respondents to the Complainant.

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Names are confusingly similar to the STARLINK Mark.

It is uncontroverted that the Complainant has established rights in the STARLINK Mark based on its fame as well as its numerous registered trademarks for the STARLINK Mark in jurisdictions worldwide. The registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. As stated in [WIPO Overview 3.0](#), section 1.2.1, “[w]here the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case”. Thus, the Panel finds that the Complainant satisfied the threshold requirement of having rights in the STARLINK Mark.

The Disputed Domain Names consist of the STARLINK Mark in its entirety followed or preceded by the various terms, including “az”, “sonoita”, “tubac”, “riorico”, “payson”, “phoenix”, “arizona”, and “vail”, and then followed by the generic Top-Level Domain (“gTLD”) “.com”. It is well established that a domain name that wholly incorporates a trademark may be deemed confusingly similar to that trademark for purposes of the Policy despite the addition of other terms. As stated 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”. The addition here of the various geographical terms to the Complainant's STARLINK Mark to create the Disputed Domain Names cannot prevent a finding of confusing similarity. See *e.g.*, *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and *Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. [D2008-0923](#).

Finally, the addition of a gTLD such as “.com” in a domain name is a technical requirement. Thus, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Disputed Domain Names are confusingly similar to the Complainant’s STARLINK Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

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

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a *prima facie* case. The Complainant has not authorized, licensed or otherwise permitted the Respondents to use its STARLINK Mark. Nor does the Complainant have any type of business relationship or affiliation with the Respondents. There is also no evidence that the Respondents are commonly known by the Disputed Domain Names or by any similar names, nor any evidence that the Respondents were using or making demonstrable preparations to use the Disputed Domain Names in connection with a *bona fide* offering of goods or services. See Policy, paragraph 4(c). The Panel finds that nothing on the record before it would support a finding that the Respondents are making a legitimate noncommercial or fair use of the Disputed Domain Names. Further, while the Complainant permits third parties to provide installation services for its products, the Respondents are not authorized to register the Disputed Domain Names or to use the STARLINK Mark as a source-identifier for its installation services.

The Respondent Tim Wagner contends that he purchased the Disputed Domain Names in anticipation of joining the Complainant’s “Affiliate Program”. However, noting the Respondent’s application for the program was not accepted, the Disputed Domain Names – which are comprised of the Mark plus a geographical term – suggest an affiliation with the Complainant which does not in fact exist. Based on the use made of the Disputed Domain Names to resolve to a website that impersonates the Complainant’s official website in an attempt to deceive consumers into believing that they have reached a website that is operated or endorsed by or otherwise affiliated with the Complainant, the Panel finds that the Respondents are not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Names. See *MasterCard International Incorporated v. Dhe Jonathan Firm*, WIPO Case No. [D2007-0831](#) (finding that the act of linking the respondent’s impersonating website to the complainant’s official website was not a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name).

Finally, the composition of the Disputed Domain Names, comprising the entirety of the STARLINK Mark followed by the various geographically descriptive terms, including “az”, “sonoita”, “tubac”, “riorico”, “payson”, “phoenix”, “arizona”, and “vail”, cannot constitute fair use here, as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Thus, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant as the Respondents lack rights or legitimate interests in respect of the Disputed Domain Names.

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

The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondents’ bad faith pursuant to paragraph 4(b) of the Policy.

First, the Complainant's trademark is contained in its entirety in the Disputed Domain Names. The use of a domain name to intentionally attempt to attract Internet users to a respondent's website or online location by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of the registrant's website or online location for commercial gain demonstrates registration and use in bad faith.

Second, the Respondents have effectively used the Disputed Domain Names to impersonate the Complainant in the absence of authorization to use the Complainant's marks, an indication of bad faith. The Respondents' use thereby evidences a clear intent to trade off the Complainant's goodwill by creating an unauthorized association between the Respondents and the Complainant's STARLINK Mark. See *Banco Bradesco S.A. v. Fernando Camacho Bohm*, WIPO Case No. [D2010-1552](#). Such conduct is emblematic of the Respondents' bad faith registration and use of the Disputed Domain Names.

Moreover, the Complainant alleges that Internet users attempting to visit the Complainant's website have ended up on the webpage set up by the Respondents. Each of the Disputed Domain Names – the Mark plus a geographical term – resolve to a website offering services using the STARLINK Mark which in connection with the Disputed Domain Names is likely to mislead Internet users into believing that the Respondents provide the Complainant's goods and services as an official partner which is not the case, demonstrating bad faith.

Although there is a statement saying that it is "not affiliated with Starlink" at the website, the statement is not prominent (in one instance appearing in the same font and in-line with other text and in the other seeming to be tied to VOIP services) and above all does not counter the impression of affiliation given by the Disputed Domain Names. Further, it is only at the very bottom of the Respondent's webpages that one finds out that they are in fact "Atomic Cosmic Installers" or "ACI", a company unaffiliated with the Complainant. The Respondents are thus falsely suggesting via the composition of the Disputed Domain Names that their websites are official partner websites of the Complainant.

Finally, the Respondents are offering installation services for the Complainant's STARLINK Internet services on the website found at the Disputed Domain Names. Noting also that the Respondents admittedly applied to become one of the Complainant's registered affiliates, the Respondents would have been aware of the Complainant's rights in the STARLINK Mark on the dates that the Disputed Domain Names were registered. Further, the Panel notes the Respondents' failure to address the Complainant's cease-and-desist letter.

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

## **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 Names, <arizonastarlink.com>, <starlinkaz.com>, <starlinkpayson.com>, <starlinkphoenix.com>, <starlinkriorico.com>, <starlinksonoita.com>, <starlinktubac.com>, and <starlinkvail.com>, be transferred to the Complainant.

*/Lynda M. Braun/*

**Lynda M. Braun**

Sole Panelist

Date: May 1, 2023