

ADMINISTRATIVE PANEL DECISION

Aitch Group Limited v. Filip Sazavsky
Case No. D2023-2381

1. The Parties

The Complainant is Aitch Group Limited, United Kingdom, represented by S&P Legal, United Kingdom.

The Respondent is Filip Sazavsky, Czech Republic.

2. The Domain Name and Registrar

The disputed domain name <aitch.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 1, 2023. On June 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 5, 2023, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 6, 2023, 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 June 7, 2023.

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 June 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2023. The Response was filed with the Center on June 24, 2023. The Complainant filed an unsolicited supplemental filing on July 8, 2023.

The Center appointed John Swinson as the sole panelist in this matter on July 6, 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

The Complainant is a property developer in London that regenerates and builds properties, and manages the acquisition, funding, planning, design, construction, and marketing of such property development projects.

The Complainant owns a European Union Trademark Registration for AITCH, being registration number 012842811 that was filed on May 2, 2014, and was registered on September 4, 2014.

The disputed domain name was registered on November 13, 2000.

The disputed domain name diverts to a listing page on the BrandBucket website, where the disputed domain name is currently listed for sale for USD 31,820 or for lease for USD 2,918 per month. The listing states: "A short, technical name with a nod to 'AI' that feels totally neat in any industry. Possible uses: A virtual reality company. An animation studio. An app developer. An arcade. A trade show."

Between April 2021 and March 2013, a representative of the Complainant and BrandBucket engaged in sporadic email negotiations regarding the purchase of the disputed domain name. The Complainant's final offer was not enough for the Parties to conclude a deal.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends in respect of bad faith that "circumstances indicate that the domain name was registered or acquired primarily for the purpose of selling, or otherwise transferring the domain name registration to the Complainant for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the domain name and the Complainant believes that the Respondent has engaged in a pattern of such conduct in it's day to day business activities". This is the Complainant's full submission in respect of bad faith.

B. Respondent

The Respondent contends that "Aitch" is a common noun, that is currently being used by several companies (over 100 LinkedIn results) and will continue to be used by many companies in the future.

The Respondent also contends that the disputed domain name is a valuable digital property, and the Complainant is well aware of this, and that is why he offered to buy it.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and are being used in bad faith.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

Procedural Issue – Supplemental Filing

After the Panel had been appointed, the Complainant filed a short unsolicited supplemental filing that respondent to statements made in the Response.

Paragraph 10 of the Rules vests the Panel with the authority to determine the admissibility, relevance, materiality, and weight of the evidence, and also to conduct the proceedings with due expedition. There is no provision in the Rules for a party to file additional unsolicited submissions. Unsolicited supplemental filings are generally discouraged.

A party submitting an unsolicited supplemental filing should show some exceptional circumstances as to why it was unable to provide the information contained therein in its complaint or response (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6).

The supplemental filing is a rebuttal of the Respondent's contentions. The information in the supplemental filing could have been included in the original Complaint. For example, the original Complaint does not include any evidence regarding when the Complainant was founded, when the Complainant first started to use the AITCH trademark or the reputation of the Complainant or the AITCH trademark. The supplemental filing states, without providing any evidence, that the Complainant "has been trading as Aitch since 1996". This information could have easily been provided in the Complaint. In any event, as discussed below, a mere assertion by the Complainant is not proof.

The Panel finds that the Complainant has not demonstrated, or even addressed, any exceptional circumstances as to why the supplemental filing should be considered by the Panel.

Even if the supplemental filing was to be admitted, the Panel considers that the supplemental filing would not affect the Panel's analysis under the third element. The Panel has reviewed the Complainant's supplemental filing and the matters raised do not affect the outcome of this case. Accordingly, the supplemental filing is not admitted.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

In view of the Panel's decision in respect of the third element of the Policy, the Panel does not need to reach a decision in respect of the second element of the Policy.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

According to the Complainant, the disputed domain name was registered in November 2000. The Complainant's trademark was not registered until 2014. There is no evidence in the Complaint of the Complainant's use of the AITCH trademark prior to November 2000. In fact, there is no evidence of the Complainant's use of the AITCH trademark at all. The supplemental filing (which, as stated above, has not been accepted by the Panel) asserts that the Complainant "has been trading as Aitch since 1996", but no evidence was provided to support this assertion; this would have been critical to the case and should have been in the initial filing – but again, it is a mere assertion without evidence (let alone as to reputation at the time the disputed domain name was registered). The Panel is unable to infer that the Respondent (who has an address in the Czech Republic) was aware of the Complainant who is a London property developer, in November 2000 when the disputed domain name was registered.

The Complainant's AITCH trademark is not famous or unique or from what the Panel can see even particularly widely known. The Complainant provided no evidence of its reputation or claimed common law rights. The Complainant provided no rationale as to why the Respondent would likely have been aware of the Complainant or the disputed domain name.

The disputed domain name was acquired by the Respondent prior to the Complainant filing for or obtaining a registered trademark for AITCH. Accordingly, evidence of common law reputation is even more important in this case. As stated above, the Complainant provided no such evidence.

The Complainant asserts that circumstances indicate that the disputed domain name was registered or acquired primarily for the purpose of selling the disputed domain name to the Complainant. However, the Complainant did not provide any details of such circumstances.

Accordingly, the Panel finds no evidence of bad faith registration.

Moreover, the Respondent's conduct after registration does not allow the Panel to infer that the Respondent registered the disputed domain name in bad faith. There is no evidence in the record that the Respondent targeted the Complainant in the 22 years period after the disputed domain name was registered.

There is no evidence of bad faith use. A representative of the Complainant anonymously contacted BrandBucket to purchase the disputed domain name. In the two years of negotiations, the Complainant's representative never asserted any bad faith of the Respondent, but rather offered to acquire the disputed domain name. When this offer was not accepted, the Complainant brought this Complaint.

The Respondent acquired the disputed domain name in November 2000. There is no evidence of what occurred between 2000 and 2021. The fact that the disputed domain name was listed for sale for approximately USD 30,000 is not by itself conclusive of bad faith. Although it is not the place of panelists to determine the fair value of domain names, one could conclude that this price, which does not seem to be outrageous, was set based on factors other than the trademark value to the Complainant, such as the length of the disputed domain name (5 letters), appearance of the term "ai", and the period of time it had been held. See also *Virutex Ilko S.A. v. Dynadot, LLC (Super Privacy Service LTD c/o Dynadot) / Embrand, Michael Bilde*, WIPO Case No. [D2020-3379](#).

The Complainant asserted that it believed that the Respondent is engaged in a pattern of bad conduct, but provided no support for this statement.

In short, there is no evidence that points to a speculative registration of the disputed domain name in November 2000 for the specific purpose of targeting the Complainant or other brand owners.

Based on the available record, the Panel finds the third element of the Policy has not been established.

D. Reverse Domain Name Hijacking (“RDNH”)

The Respondent requests a finding of RDNH, asserting that the Complainant is using this dispute process to try to lower the price.

Paragraph 15(e) of the Rules provides that, if “after considering the submissions the panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.” RDNH is defined under the Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

Here, the Complainant may have had a justifiable case – if it had evidence of its reputation in 2000 (claiming to have started up some years before) and evidence it was being targeted, but it did not present sufficient evidence to prove its case. (Similarly, the Respondent did not present evidence that the Complainant brought this case to harass the Respondent or as an abuse of process.). A find of RDNH is discretionary. Here the Panel chooses not to make one, while cautioning the Complainant (or perhaps more accurately, its counsel) in future to limit invocation of the Policy to cases fully presented and in particular taking account of relevant (freely-available) jurisprudence.

In the circumstances, the Panel declines to make a finding of RDNH.

7. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: July 20, 2023