

ADMINISTRATIVE PANEL DECISION

Data Parrot Holdings, LLC v. Christopher Hamoen
Case No. DAI2024-0072

1. The Parties

The Complainant is Data Parrot Holdings, LLC, United States of America (“U.S.”), represented by MLO., United Kingdom.

The Respondent is Christopher Hamoen, U.S., represented by ESQwire.com PC, U.S..

2. The Domain Name and Registrar

The disputed domain name <dataparrot.ai> 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 28, 2024. On October 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 29, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2024. The Respondent was granted the automatic four-day extension pursuant to paragraph 5(b) of the Rules and three additional exceptional days pursuant to paragraph 5 (e) of the Rules. The Response was filed with the Center on November 27, 2024.

The Center appointed Martin Schwimmer, Evan D. Brown, and Gary Saposnik as panelists in this matter on December 18, 2024. The Panel finds that it was properly constituted. Each member of 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 U.S. Registration no. 5968316 for the mark DATA PARROT, registered on January 21, 2020. It has used the mark in relation to software as a service (SAAS) featuring software for copying relational data between databases in the field of enterprise software. It maintains a website at <dataparrot.io>.

The Respondent registered the disputed domain name on March 30, 2023. That same day, he filed a U.S. trademark application for DATA PARROT in relation to software as a service (SAAS) services featuring software for analyzing business data and providing insights using AI. He promotes SAAS services at <dataparrot.ai>.

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 that the Respondent is knowingly and willfully using the disputed domain name to promote competing services in a manner designed to exploit confusion with Complainant's DATA PARROT mark. The Complainant asserts that the DATA PARROT trademark is arbitrary with regard to its services.

B. Respondent

The Respondent contends that the Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name. He asserts that the Complainant has abandoned any rights it may have had in its trademarks; that he has legitimate rights in the disputed domain name, as he is making a bona fide offering of services; and he selected the name in good faith. The Respondent disputes the Complainant's assertion that the parties' respective services are related.

6. Discussion and Findings

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

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

The Complainant asserts ownership of two federal trademark registrations reflecting the DATA PARROT trademark. The Panel notes that the Complainant's registrations create a presumption of its ownership of its mark, a presumption buttressed by its present use of the mark at <dataparrot.io>. The Respondent has made somewhat scattershot allegations that the Complainant has abandoned rights in its trademark, insufficient to rebut the Complainant's showing of ownership.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Panel finds that, before notice to the Respondent of the dispute, the Respondent used or made demonstrable preparations to use the disputed domain name or a name correspondent to the disputed domain name in connection with a bona fide offering of services. [WIPO Overview 3.0](#), section 2.2.

Specifically, while the Complainant asserts that it sent a demand letter to the Respondent on July 14, 2023, the Respondent previously had applied to the U.S. Trademark Office for the mark DATA PARROT on the day it registered the disputed domain name, namely March 30, 2023.

Additionally, the record contains evidence that the Respondent utilizes the disputed domain name in connection with a bona fide offering of services, here using the term “bona fide” to mean “real” as opposed to “sham” (vs non-infringing, on which the Panel does not opine). The Respondent’s website and social media presence are consistent with that of a real public business. Furthermore, the Complainant itself supplied an example of unsolicited press coverage of the Respondent’s business, when it received a grant from a development agency. While the Complainant offered the press coverage as evidence of actual confusion, the blog post in question establishes, simply put, that the Respondent runs a real public business.

However, the mere existence of a real offering by a respondent does not the end of the Paragraph 4(c) analysis. The Respondent’s offering must be lawful. For example, a respondent’s sale of counterfeit merchandise would not constitute a bona fide offering and would therefore not give rise to legitimate rights in the domain name. Additionally, a respondent may not use a domain name reflecting a complainant’s famous trademark to offer competitive goods. Nor may a respondent use a trademark identical to complainant’s trademark, even if the trademark is not famous, to offer goods or services identical to those of the Complainant. *Eyeo GmbH v. Sumit Kumar, Ablock Inc.*, WIPO Case No. [D2018-0320](#).

In sum, in order to prevail under Paragraph 4(c), the Respondent may not intentionally infringe the trademark rights of the Complainant. The Complainant has not carried its burden in that regard.

First, we note that the Complainant has not unequivocally established the Respondent had actual knowledge of the Complainant’s trademark rights prior to his registration of the disputed domain name. While DATA PARROT is claimed to be arbitrary in relation to the Complainant’s services, it is not so unique that independent adoption is impossible (the Panel notes that it is may be an open question whether the mark is arbitrary, or whether it is suggestive). The Complainant alleges but doesn’t establish that the Respondent was likely aware of the Complainant’s rights in its mark as a result of searching the WHOIS and/or trademark databases. While the Respondent’s sworn statement that he was unaware of the Complainant’s mark and registrations prior to registration of the disputed domain name and his trademark application, and his contention that he believed that the Complainant’s use of its mark is de minimis, are of questionable veracity, the Complainant has not established that significant sales, advertising, or media coverage have given rise to a sufficient reputation such that the Panel could comfortably conclude that not only did the Respondent know

of (or have constructive knowledge of) the existence of the Complainant, but that he was motivated to take advantage of said reputation. (The Panel does note that a (May 2023) screenshot annexed to the Complaint shows the Respondent's site using a very similar logo on its site to that of the Complainant, at present the Respondent uses an infinity symbol – this could either be evidence of knowledge and targeting, or it could show an effort to avoid confusion (or both).)

The Complainant argues that in view of the identity of the parties' trademarks, the alleged relatedness of the parties' goods and services, and incidents of alleged actual confusion, that the Respondent's use of the disputed domain name is infringing. Whether or not that is the case, evaluating the Complainant's claim would require the Panel to make findings as to, inter alia, the strength of the Complainant's trademark, and the channels of trade of the parties' respective services. This is a matter for a civil court and not one for this Panel. As ably stated by the Panel in *Innovative Research Technology, Inc v. 513 Ventures, LLC*, WIPO Case No. [D2024-2861](#):

This Panel is not a general domain name court, and the Policy is not designed to adjudicate all disputes of any kind that relate in any way to domain names. *The Thread.com, LLC v. Jeffrey S. Poploff*, WIPO Case No. [D2000-1470](#). Rather, the Policy is narrowly crafted to apply to a particular type of abusive cybersquatting. Id.

When a dispute involves potential trademark infringement that raises complex issues beyond clear cybersquatting, such matters are generally more appropriately resolved in judicial proceedings rather than under the UDRP.

Accordingly, noting that the Respondent has proffered evidence of demonstrable preparation and use of the disputed domain name prior to receiving notice of this dispute from the Complainant, the Panel finds the second element of the Policy has not been established.

In view of this holding, it is not necessary for the Panel to discuss the third element under the Policy. Importantly, the Panel takes no position on the merits of any wider dispute between the Parties. The Complainant remains free to seek remedies in other fora and the Panel notes for completeness that the present finding is confined to the Policy and that it does not seek to influence any such subsequent proceedings, should they be raised.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Martin Schwimmer/

Martin Schwimmer

Presiding Panelist

/Evan D. Brown/

Evan D. Brown

Panelist

/Gary Saposnik/

Gary Saposnik

Panelist

Date: January 1, 2025