

ADMINISTRATIVE PANEL DECISION

Surecom Corporation NV v. Privacy service provided by Withheld for Privacy ehf / Alex Veremeenko
Case No. D2022-1172

1. The Parties

The Complainant is Surecom Corporation NV, Netherlands, represented by Calhoun, Bhella & Sechrest LLP, United States of America.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Alex Veremeenko, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <cams4.org> (the “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 April 2, 2022. On April 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 5, 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 April 21, 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 April 26, 2022.

The Center verified that the Complaint together with the amendment to 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 May 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2022. The Respondent did not submit a formal response, but an email communication was sent to the Center on April 25, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on July 19, 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 to ensure compliance with the Rules, paragraph 7.

The Respondent appears to be located in Ukraine, and the Panel has considered to suspend the proceeding. However, the Panel notes that the Respondent has received the Complaint and information from the Center on how to file a response as his email appears to be functioning. Moreover, the Respondent has not requested a suspension, and a suspension is highly unlikely to make any difference as to the outcome of this case.

4. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Noting that the Respondent's disclosed location appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel has reached this conclusion in part due to Respondent's apparent awareness of the proceeding and control over the Domain Name. Further to the Rules, the Center transmitted the written notice of the Complaint to both the named Privacy Service and the Respondent. The Center also sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar and to a postmaster email address as specified by the Rules. There is no evidence that the case notification email to the disclosed Respondent email address was not successfully delivered. Rather, on April 25, 2022, an email was received by the Center from a third party using an email address composed of the Respondent's initials, the same email provider, and signing off as "Alexander", which stated that the Domain Name had been shut down. The Panel notes that the Domain Name no longer resolves to an active website. Given the notable similarities in information shared between the third party and the Respondent, as well as the seeming control of the Domain Name inferred by the email, the Panel suspects that the third party was indeed the Respondent.

The Panel also notes that the Complainant has specified in the Complainant that any challenge made by the Respondent to any decision to transfer or cancel the Domain Name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, Namecheap, Inc., is in Arizona, United States of America.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the Domain Name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainant operates a live adult webcam website known as "cam4.com". The Complainant owns the <cam4.com> domain name since 1999. The Complainant's webpage has generated over a billion visitors, and in 2013 it had more than 57 million visitors.

The Complainant holds trademark registrations for “CAM4” in several jurisdictions, such as United States of America trademark registration No. 4,062,460 registered on November 29, 2011.

The Domain Name appears to be registered on November 12, 2021. The Domain Name has resolved to a website seemingly impersonating the Complainant that features adult webcam entertainment in competition with the Complainant.

6. Parties’ Contentions

A. Complainant

The Complainant provides evidence of trademark registrations. The Complainant argues that the Domain Name is confusingly similar to the Complainant’s trademark, as the Domain Name consists of the Complainant’s trademark with the letter “s” between “cam” and “4” of the Complainant’s trademark.

The Complainant asserts that the Respondent is not authorized to use the Complainant’s trademark, and the Respondent is not commonly known by the Domain Name. The Respondent has not made any use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, the Respondent is impersonating the Complainant for purposes of hosting similar adult content at the Domain Name, which includes a copyright footer citing the Complainant’s CAM4 trademark without modification.

The Complainant argues that the Respondent has intentionally attempted to attract for commercial or other gain, 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. The Respondent has used the Domain Name to impersonate the Complainant. It suggests that the Respondent was aware of the Complainant’s site and trademark. The Complainant believes the Respondent chose the Domain Name to usurp the Complainant’s rights in bad faith. It is underlined by the Respondent’s use searchable keywords connected to the Complainant and its trademark.

B. Respondent

The Respondent has not replied to the Complainant’s contentions.

7. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademark CAM4. The test for confusing similarity involves a comparison between the trademark and the Domain Name. The Domain Name incorporates the Complainant’s trademark, with the letter “s” sandwiched between “Cam” and “4”. The addition does not prevent a finding of confusing similarity between the Domain Name and the trademark.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top Level Domains (“gTLDs”), see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

As stated in [WIPO Overview 3.0](#), section 2.1, “while 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 Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register a domain name containing the Complainant’s trademark or otherwise make use of the Complainant’s mark. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered trademark rights. The Respondent has not made use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering. Rather, the Respondent’s use of the misleading Domain Name to impersonate the Complainant to host competing adult content for the Respondent’s presumed commercial gain neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of paragraph 4(c) of the Policy. Moreover, the use is rather evidence of bad faith, see below.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Based on the use of the Domain Name, the Panel finds that the Respondent must have been aware of the Complainant and its trademark when the Respondent registered the Domain Name. Moreover, the composition of the Domain Name suggests that the Respondent was aware of the Complainant when registering the Domain Name.

The Respondent appears to have used the Domain Name to attempt to attract for commercial or other gain, users to its website or other online location, by creating a likelihood of confusion with the Complainant’s trademark. The Respondent has used the Domain Name to resolve Internet users to a commercial website that hosts competing content to that of the Complainant, while also including a copyright footer that cites the Complainant’s CAM4 trademark. Based on the evidence of the case, the Panel agrees that it is more likely than not that the Respondent has chosen and used the Domain Name in bad faith.

As regards the current inactive status of the Domain Name, the change in use further reinforces the Panel’s finding that the Respondent lacks any credible good faith explanation as to the registration and prior use of the Domain Name. Under the totality of the circumstances, the Panel finds that the current passive holding of the Domain Name does not prevent a finding of bad faith. See section 3.3 of the [WIPO Overview 3.0](#).

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of 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 <cams4.org> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: July 25, 2022