

ADMINISTRATIVE PANEL DECISION

Hamilton Reserve Bank, Ltd and Montpelier Group, Ltd. v. Host Master, 1337 Services LLC

Case No. D2023-3923

1. The Parties

The Complainants are Hamilton Reserve Bank, Ltd. and Montpelier Group, Ltd., Saint Kitts and Nevis, both represented by Hinckley, Allen & Snyder, LLP, United States of America (“United States”).

The Respondent is Host Master, 1337 Services LLC, Saint Kitts and Nevis.

2. The Domain Name and Registrar

The disputed domain name <hamiltonreservebank.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 19, 2023. On September 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 20, 2023, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Tucows Domains, Inc.) and contact information in the Complaint.

The Center sent an email communication to the Complainants on September 21, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainants filed an amended Complaint on September 26, 2023.

The Center verified that the Complaint [together with the amendment to the Complaint/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 September 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 18, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on October 25, 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 first Complainant owns United States Registered Trademark No. 7,144,932 for the following device mark:



The trademark is a services mark in respect of banking and financing services in International Class 36 which has been registered in the Principal Register since August 22, 2023. The colours vermillion, Prussian blue, and black have been claimed as features of the mark. There is a disclaimer of the words "Reserve Bank" apart from the mark as shown. The certificate claims first use in commerce on October 1, 2018.

The first Complainant licensed use of the trademark exclusively to the second Complainant on August 11, 2022. According to the Complaint, however, the second Complainant has been using the trademark in connection with its global banking business since 2018. Also according to the Complaint, the second Complainant has spent approximately USD 1.5 million on marketing and promoting its "comprehensive banking solutions and financial services to a large and rapidly expanding global clientele."¹

According to the WhoIs record, the disputed domain name was registered on March 27, 2023.

Although currently resolving to a crashed page, the disputed domain name resolved to a website which featured the Complainant's registered trademark and which made allegations of serious criminal conduct and other improprieties against the Complainant (or at least the second Complainant) and officers of the Complainant. These allegations are vehemently denied by the Complainant as defamatory and malicious.

On July 31, 2023, the Complainant filed an objection against the website with the then registrar (or webhost), NameBright. NameBright took down the website, or caused it to be taken down.

Some 14 hours later on July 31, 2023, the Complainant filed a further objection with WebNic against a new iteration of the website. WebNic also took down the website or caused it to be taken down.

After the re-emergence of the website yet again, the Complainant filed this Complaint.

From the Complainant's letters to the former registrars, NameBright and WebNic, it appears that the Complainant maintains a website at "www.hrbbank.com".

¹ Unless it becomes necessary to distinguish between them, the Panel will simply refer to the Complainant for ease of reference in the following.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 is being used in bad faith.

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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the HAMILTON RESERVE BANK registered service mark in the United States of America for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel acknowledges that the referred trademark registration postdates the disputed domain name; this is not however relevant for the first element. [WIPO Overview 3.0](#), section 1.1.3.

The Complainant also claims to have common law rights for HAMILTON RESERVE BANK and HAMILTON INTERNATIONAL RESERVE BANK and the device mark. Acknowledging that the Complaint does claim that the Complainant has spent USD 1.5 million in advertising and promotion since 2018, and that it has a registered mark, it is not necessary to establish common law rights.

The Panel will compare the disputed domain name to the Complainant's registered trademark. This comparison simply requires a visual and/or aural comparison of the disputed domain name to the proven trademarks in regard to their textual components. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top - Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10.

The figurative elements of the Complainant's trademark are not so dominating that the verbal element cannot be considered an essential or important part of the trademark in this case. Accordingly, it is appropriate to apply the usual rule.

The trademark registration does also include a disclaimer over the exclusive use of the words "reserve bank". However, the verbal component of the disputed domain name is the entirety of the verbal component of the Complainant's trademark, not just the words "reserve bank".

There may arguably be a descriptive aspect to the verbal element of the Complainant's trademark. In the circumstances of the present case and given the nature of the first element under the Policy as a standing requirement, it is appropriate to consider issues potentially arising from that arguably descriptive connotation in the context of the other requirements under the Policy. The Panel also notes that there is no doubt a source identifier of the Complainant was being targeted by the Respondent.

Accordingly, 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, therefore, 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.

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. [WIPO Overview 3.0](#), section 2.1.

The Complainant states, and it is clear from the content of the Respondent's website, that the Complainant has not authorised the Respondent's use of the disputed domain name and the Respondent is not otherwise associated or affiliated with the Complainant.

The disputed domain name is not derived from the Respondent's name. Nor is there any evidence that the Respondent is commonly known by any other name from which the disputed domain name could be derived.

As discussed in section 5C below, it appears that the Respondent registered the disputed domain name after the Complainant commenced using its trademark.

Given the content of the website, the Respondent does not purport to be operating a "reserve bank" in a place called (or under a given name of) Hamilton.

The content of the website to which the disputed domain name resolves could arguably give rise to a claim that there is a legitimate interest in the use of the disputed domain name in connection with a criticism site.

The content of the website does make very serious allegations. As already noted, the Complainant vehemently denies them, claiming the contents are false, defamatory and malicious. The Panel of course is not in a position to determine the truth or otherwise of the allegations and that is no part of the Panel's role.

Generally, panels have not sustained a claim to rights or legitimate interests in a disputed domain name for a genuine criticism site where the disputed domain name is identical to the Complainant's trademark and does not include some sort of qualifier or additional element such as <trademarksucks.com> or the like. See . [WIPO Overview 3.0](#), section 2.6.2 and *Dover Downs Gaming & Entertainment, Inc. v. Domains By Proxy, LLC / Harold Carter Jr, Purlin Pal LLC*, WIPO Case No. [D2019-0633](#).

The present case is such a case as the exact correspondence of the disputed domain name to the Complainant's trademark gives rise to a very high risk of impersonation.

Moreover, the website to which the disputed domain name resolves does not include a disclaimer but the likelihood that anyone landing on the website would consider it the Complainant's website or authorised by the Complainant appears to be very low to non-existent.

However, the Respondent has made no attempt to defend its allegations or justify its conduct. Further, as the Complainant points out, the Respondent has been an unsuccessful respondent in numerous prior cases. These include *Euclid Labs, Inc. v. Host Master, 1337 Services LLC* WIPO Case No. [DME2022-0016](#), *Linklaters LLP v. Host Master, 1337 Services LLC*, WIPO Case No. [D2022-2976](#); *Rachio, Inc., v. Host Master, 1337 Services LLC*, WIPO Case No. [D2022-2751](#); and *Silver Lake Management L.L.C. v. Host Master, 1337 Services LLC*, WIPO Case No. [D2022-2746](#). These prior decisions have not necessarily involved "criticism" sites. For example, in the *Euclid Labs*, supra, decision, the website purported to be the trademark owner's genuine website. Similarly, in the *Linklaters*, supra, and *Silver Lake Management*, supra, decisions. Of course, the fact that the Respondent has been found not to have rights or legitimate interests in a prior proceeding, or proceedings, does not mean it cannot have rights or legitimate interests in a different domain name.

However, the number of decisions and the nature of the websites in those cases does raise a strong inference that the Respondent is not operating a genuine criticism site in the present case.

In these circumstances, given the high risk of impersonation from the use of an identical domain name, the Respondent's failure to attempt to defend its registration and use of the disputed domain name and the Respondent's history of impersonating numerous other domain names, the Panel finds that the Complainant has established the necessary *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd* WIPO Case No. [D2010-0470](#).

Paragraph 4(b) identifies situations which may demonstrate that registration or use of a disputed domain name was not in bad faith under the Policy:

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 and use of [the disputed] domain name in bad faith:

(i) circumstances indicating that [the Respondent] has registered or [the Respondent has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or

(ii) [the Respondent has] registered the [disputed] domain name in order to prevent the owner of the trademark 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 [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line 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] web site or location.

The instances of bad faith set out in paragraph 4(b) of the Policy are examples only, intended to illustrate types of conduct which is caught by the Policy. See *Do The Hustle, LLC v Tropic Web* WIPO Case No. [D2000-0624](#).

The disputed domain name registration predates the Complainant's trademark registration. Although the Complainant also claims unregistered trademark rights in HAMILTON RESERVE BANK since 2018, the Complainant has not provided evidence to support this allegation directly.

While this scenario would, at first, prevent a finding of bad faith, findings of bad faith may still arise where the circumstances indicate the disputed domain name was registered with knowledge of the Complainant's mark even if the trademark was not registered or was only inchoate. See [WIPO Overview 3.0](#), section 3.8.2.

In the present case, the Complainant's trademark was filed with the United States Patent and Trademark Office on July 18, 2022 – before the disputed domain name was registered. The trademark registration details recorded by the United States Patent and Trademark Office also record that the Complainant claimed to have first used the trademark in commerce in the United States on October 1, 2018. Furthermore, the content of the website to which the disputed domain name resolved includes claims about alleged conduct of the Complainant since at least 2021, before the disputed domain name was registered. Thus indicating that Complainant was using the HAMILTON RESERVE BANK mark prior to the registration of the disputed domain name and, in addition, that Respondent has registered the disputed domain name with the Complainant's trademark in mind.

Accordingly, (i) the prior use of the HAMILTON RESERVE BANK mark by the Complainant supported by the content of the disputed domain name; (ii) the prior knowledge of the Respondent over the Complainant, (iii) the Respondent's failure to come forward to justify the registration and use of the disputed domain name in these proceedings, and (iv) the above finding that the Respondent does not have rights or legitimate interests in the disputed domain name, are circumstances that, altogether, allow the Panel to find that the domain name was registered and is being used in bad-faith.

Accordingly, the Complainant has established all three requirements under 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 disputed domain name, <hamiltonreservebank.com>, be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: November 8, 2023