

ADMINISTRATIVE PANEL DECISION

Skillsoft Corporation v. harry martins

Case No. D2023-4397

1. The Parties

Complainant is Skillsoft Corporation, United States of America (“United States”), represented by ZwillGen PLLC, United States.

The Respondent is harry martins, United States.

2. The Domain Name and Registrar

The disputed domain name <skillsofts.com> (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 October 24, 2023. On October 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 24, 2023, 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 (Private Registrant) and contact information in the Complaint. The Center sent an email to Complainant on October 26, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 1, 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 Respondent of the Complaint, and the proceedings commenced on November 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 13, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on December 20, 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

According to the Complaint, Complainant is “a U.S. based company that helps democratize learning with powerful cloud-based tools.” Since May 29, 1998, Complainant has owned the domain name <skillsoft.com> and has used that domain name as Complainant’s “primary internet presence and point of contact for employees, clients, customers, and media.”

At its website, Complainant describes itself as “a global leader in cloud-based learning.” The website features various awards Complainant has won, including (for 2023): *Training Industry* “IT and Technical Training Top 20 Company” and *Training Magazine Magazine’s* “Network Choice Award – Network Portal.”

Complainant holds a United States registered trademark for the word mark SKILLSOFT, Reg. No. 2,667,976, registered on December 31, 2002 in connection with, “Computer services, namely, temporary use of non-downloadable education computer software for providing, creating, and deploying computer-based courses of study in the fields of business skills education and professional development, and for tracking and reporting learning results related to the courses of study; educational consulting services, namely, planning, development, implementation, and administration of computer based educational programs in the fields of business skills education and professional development,” with a March 15, 1999 date of first use in commerce.

The Domain Name was registered on October 17, 2023. As of November 11, 2023, the Domain Name resolved to a rudimentary landing page with various apparent hyperlinks, in German and suggestive of energy advice, online business technology, or online conferences (“Energieberater”, “Technischer Betriebswirt Online”, “Online Konferenzen”).

Complainant alleges, without supporting evidence, that Respondent has registered the Domain Name in order to pursue a phishing scam against Complainant’s customers or others. Respondent does not deny the allegation that he plans to pursue a phishing scam by means of the Domain Name.

5. Parties’ Contentions

A. Complainant

Complainant asserts that it has established the three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the mark SKILLSOFT through registration demonstrated in the record. The Panel also finds the Domain Name to be confusingly similar to that mark. The Domain Name incorporates the mark in its entirety and adds the letter “s” to the mark. This additional letter does not overcome the fact that the SKILLSOFT mark remains clearly recognizable within the Domain Name.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent has no rights or legitimate interests in respect of the Domain Name. Respondent has not come forward in this proceeding to articulate why it registered the Domain Name or otherwise explain his bona fides. The only use to which the Domain Name has been put to date is for a landing page with a few apparent hyperlinks somewhat suggestive of the online learning and training services offered by Complainant for more than 20 years under the SKILLSOFT trademark. On this record, the Panel finds that Respondent has no rights or legitimate interests vis-à-vis the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates here its observations above in the “rights or legitimate interests” section. On this rather sparse, but undisputed, record, and on a balance of probabilities, the Panel concludes that Respondent more likely than not had Complainant’s SKILL SOFT trademark in mind when registering the Domain Name.

With no supporting evidence in the Complaint, the Panel is unable to place any weight on the Complainant’s conclusory allegation that “by using the Skillsoft Mark in tandem with phishing campaigns, the Infringing Domain plainly aims to pose as Skillsoft and deceive potential website visitors and email recipients.”

The Panel concludes, based on the apparent hyperlinks previously featured at Respondent’s website, that Respondent more likely than not registered the Domain Name in order to create a false impression of affiliation with, or endorsement by, Complainant, to attract consumers to websites where Respondent would derive a commercial benefit (e.g., pay-per-click revenue). Such conduct constitutes bad faith within the meaning of the above-quoted Policy paragraph 4(b)(iv).

In addition, and in the alternative, bad faith registration and use may be found here under the doctrine of “passive holding.” As noted above, the above-quoted “bad faith” factors are not exclusive; bad faith may be found on other bases as well.

Panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use (or, at most, very limited use) of the Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of Complainant’s trademark, as well as the composition of the Domain Name (merely adding an “s” to the SKILLSOFT mark) and the fact that the apparent hyperlinks are somewhat evocative of online learning courses, and finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

Complainant has established Policy paragraph 4(a)(iii).

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 <skillsofts.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: January 4, 2024