

ADMINISTRATIVE PANEL DECISION

Silver Creek Advisory Partners LLC v. lynn layton, Evian
Case No. D2024-4753

1. The Parties

The Complainant is Silver Creek Advisory Partners LLC, United States of America ("United States"), represented by K&L Gates, LLP United States.

The Respondent is lynn layton, Evian, United States.

2. The Domain Name and Registrar

The disputed domain name <silvercreek-capital.com> (the "Disputed 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 November 19, 2024. On November 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 19, 2024, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 20, 2024, 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 December 2, 2024.

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 December 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 3, 2025.

The Center appointed Lynda M. Braun as the sole panelist in this matter on January 9, 2025. 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 Delaware, United States-based corporation that is an investment boutique management company with a principal office in Seattle, Washington, United States. The Complainant offers hedge fund strategies, private credit and investment supervisory services to private investment funds, and services high net worth individuals, pension plans, corporations, and individual retirement accounts globally. The Complainant owns national trademark registrations through the United States Patent and Trademark Office ("USPTO") including, but not limited to, the following: SILVERCREEK, United States Registration No. 3,154,036, registered on October 10, 2006; SILVER CREEK CAPITAL MANAGEMENT, United States Registration No. 4,595,998, registered on September 2, 2014; and SILVERCREEK (stylized), United States Registration No. 7,498,483, registered on September 10, 2024. In addition, the Complainant owns international trademarks in various jurisdictions worldwide (hereinafter the national and international trademarks collectively referred to as the "SILVER CREEK Mark").

The Complainant has continuously offered goods and services under the SILVER CREEK Mark since at least July 27, 1999, such that these registrations are valid, subsisting and enforceable. The Complainant also owns the <silvercreekcapital.com> domain name, which was registered on October 4, 2004, which resolves to the Complainant's official website at "www.silvercreekcapital.com", and through which the Complainant's goods and services are offered.

The Disputed Domain Name was registered on September 16, 2024, and resolves to an error landing page. The Disputed Domain was brought to the Complainant's knowledge on or about September 23, 2024, when the Complainant received contact from third parties regarding a possible phishing attempt from an email using the Disputed Domain Name. The Respondent sent emails from the Disputed Domain Name to third parties in a phishing scheme designed to fraudulently obtain information from those third parties. In the emails between the Respondent and the third parties, which incorporate the Complainant's SILVER CREEK Mark, the Respondent solicits a proposal for services related to an Investor Conference allegedly being hosted by the Complainant. The Respondent used the email address incorporating the Disputed Domain Name to impersonate the Complainant's employees. The third parties related to the Complainant were thus led to believe that they were interacting with genuine representatives of the Complainant. Screenshots of several such emails were attached as an Annex to the Complaint.

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 Disputed Domain Name is confusingly similar to the Complainant's trademark because the Disputed Domain Name contains the SILVER CREEK Mark in its entirety, joined by a hyphen and followed by the additional term "capital", and then followed by the generic Top-Level Domain ("gTLD") ".com", and thus does not prevent a finding of confusing similarity;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, among other things, the Complainant has not made demonstrable preparations to use the Disputed Domain

Name in connection with a bona fide offering of goods or services; and the Respondent was not commonly known by the SILVER CREEK Mark or any similar name; and

- the Disputed Domain Name was registered and was used in bad faith because, among other things, the Respondent used the Disputed Domain Name to impersonate the Complainant's employees and send fraudulent emails to third parties of the Complainant as part of a phishing scheme.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove the following three elements in order to prevail in this proceeding:

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that the Disputed Domain Name is confusingly similar to the SILVER CREEK Mark.

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. See [WIPO Overview 3.0](#), section 1.7.

It is uncontroverted that the Complainant has established rights in the SILVER CREEK Mark based on its years of use as well as its registered trademarks for the SILVER CREEK Mark in the United States and jurisdictions worldwide. The consensus view is that "registration of a mark is prima facie evidence of validity". The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the SILVER CREEK Mark.

The Disputed Domain Name consists of the entirety of the Complainant's SILVER CREEK Mark, joined and followed by the term "capital", and then followed by the gTLD ".com". The test for confusing similarity involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

As stated in section 1.8 of [WIPO Overview 3.0](#), "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". Thus, the addition of the term "capital" to the Complainant's SILVER CREEK Mark in the Disputed Domain Name does not prevent a finding of confusing similarity. See e.g., *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and

Hoffmann-La Roche Inc. v. Wei-Chun Hsia, WIPO Case No. [D2008-0923](#). Moreover, it is well established that a disputed domain name that wholly incorporates a trademark will normally be considered confusingly similar to that trademark for purposes of the Policy despite the addition of a hyphen. The presence or absence of punctuation marks such as hyphens cannot on their own avoid a finding of confusing similarity. See *Six Continents Hotels, Inc. v. Helen Siew*, WIPO Case No. [D2004-0656](#).

Finally, the addition of a gTLD such as “.com” in a domain name is a technical requirement. As such, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s SILVER CREEK Mark.

Based on the available record, the Panel finds that 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 that 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.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a prima facie case. The Respondent has not submitted any arguments or evidence to rebut the Complainant’s prima facie case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its SILVER CREEK Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c).

Further, based on the use made by the Respondent of the Disputed Domain Name to impersonate third parties associated with the Complainant and configure emails to perpetuate a phishing scheme does not confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”). See also *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name, holding that “such phishing scam cannot be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”). This is precisely what occurred here, where the Respondent sent fraudulent emails created from the Disputed Domain Name to impersonate the Complainant and send emails and fabricated invoices to third parties associated with the Complainant.

In sum, the Panel concludes that the Complainant has established an un rebutted prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead and defraud third parties associated with the Complainant by incorporating the Disputed Domain Name into fraudulent

emails sent by the Respondent in the name of actual employees of the Complainant. Such use cannot conceivably constitute a bona fide offering of a product or service within the meaning of paragraph 4(c)(i) of the Policy. The Panel concludes that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name.

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

C. Registered and Used in Bad Faith

The Panel notes that, 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith. The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith registration and use of the Disputed Domain, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

First, based on the circumstances here, the Panel concludes that the Respondent's registration and use of the Disputed Domain Name had been done for the specific purpose of trading on the name and reputation of the Complainant and its SILVER CREEK Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Second, panels have held that the use of a domain name for illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds that the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy due to the Respondent's reported use of an email phishing scheme in which the Respondent sent fraudulent emails to third parties associated with the Complainant. See [WIPO Overview 3.0](#), section 3.1.4 (use of a domain name for per se illegitimate activity such as phishing or impersonation/passing off is considered evidence of bad faith). See also *Stichting BDO v. Contact Privacy Inc. Customer 7151571251/gregory Motto*, WIPO Case No. [D2022-2023](#) (finding the phishing scheme and use of an email address incorporating the disputed domain name to fraudulently obtain payment of invoices to be evidence of bad faith pursuant to paragraph 4(b)(iv) of the Policy for intentionally misleading and confusing the users into believing that the Respondent was associated and/or affiliated with the Complainant). Such conduct demonstrates the Respondent's bad faith and is precisely the type of conduct that the Policy aims to proscribe.

Third, the Panel also finds that the Respondent had actual knowledge of the Complainant and its rights in the SILVER CREEK Mark when registering the Disputed Domain Name, emblematic of bad faith registration and use. It strains credulity to believe that the Respondent did not know of the Complainant or its SILVER CREEK Mark, as evidenced by the Respondent's use of the entirety of the SILVER CREEK Mark in the Disputed Domain Name with the related term "capital". Thus, the Panel finds that in the present case, the Respondent had the Complainant's SILVER CREEK Mark in mind when registering and using the Disputed Domain Name.

The Panel finds that the Complainant has established the third element 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 Disputed Domain Name <silvercreek-capital.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: January 22, 2025