ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Marlink SA v. David M Homcy
Case No. D2024-4784

1. The Parties

The Complainant is Marlink SA, Belgium, represented by MIIP - MADE IN IP, France.

The Respondent is David M Homcy, United States of America ("U.S.").

2. The Domain Name and Registrar

The disputed domain name <marlnk.com> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 20, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on November 20, 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, See PrivacyGuardian.org) and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 21, 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 November 22, 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 November 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 19, 2024.

The Center appointed Dr. Beatrice Onica Jarka as the sole panelist in this matter on December 27, 2024. 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 Belgium company specialized in providing telecommunications services and particularly involved in cybersecurity in the maritime industry which operates internationally with related companies such as MARLINK SAS in France, MARLINK INC in the U.S., MARLINK AS in the Netherlands (Kingdom of the).

In the scope of its activities, to promote its services through the world, the Complainant has filed and uses several trademarks and notably the following:

- MARLINK, European Union Trade Mark Registration No. 15333487, registered on October 4, 2016;
- MARLINK (Design), European Union Trade Mark Registration No. 15462864, registered on September 16, 2016.

The Complainant is the owner of the domain name <marlink.com> registered since May 10, 1996, which is the official website of the Complainant.

According to the information provided by the Registrar, the Respondent in this administrative proceeding is the following: David M Homcy in the U.S.

This dispute concerns the disputed domain name <marlnk.com> registered on November 5, 2024.

The disputed domain name points to a parking page with pay-per-click ("PPC") links.

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 almost identical to the Complainant's trademark MARLINK, as the only difference is the deletion of the letter "i" but this does not create strong difference on phonetic and visual standpoints, but rather misleads consumers into a common typosquatting practice;
- the generic Top-Level Domain ("gTLD") extension ".com" is generally not to be taken into consideration when examining the identity or similarity between the Complainant's trademarks and the disputed domain name;
- the Respondent has no rights including trademark rights in respect of the name MARLINK or MARLNK as it registered the disputed domain name only after the Complainant has registered its trademarks and domain names;
- a quick search among the free available trademark database reveals that the Respondent has no trademark rights in respect of the name "Marlnk";
- there is no business or legal relationship between the Complainant and the Respondent and the Complainant has neither authorized nor licensed the Respondent to use its trademarks in any way;
- the disputed domain name is not used and points to a parking page;

- when registering the disputed domain name, the Respondent employed a privacy service in order to hide its identity and to avoid being notified of a UDRP proceeding, which may be an inference of bad faith;
- the Respondent "knew or should have known" of the Complainant's trademark rights and used a domain name incorporating a trademark, in which it had no rights or legitimate interests;
- the disputed domain name has been registered with the aim of taking advantage of the well-known trademarks MARLINK as the disputed domain name points to a parking page including PPC links;
- the email servers have been activated so that emails with addresses "@marlnk.com" can be sent/received, potentially for phishing and scam. The Complainant has been the target of several phishing and scam attacks recently.

B. Respondent

Although procedurally summoned, the Respondent did not reply to the Complainant's contentions.

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 with a minor difference in the deletion of the letter "i", which does not prevent a finding of confusing similarity because the Complainant's trademark remains recognizable in the disputed domain name. In this regard, this is a clear example of typosquatting as per section 1.9 of the WIPO Overview 3.0. Indeed, the disputed domain name consists of a common, or an intentional misspelling of a trademark and is confusingly similar with the Complainant's trademark.

Moreover, the gTLD extension ".com" as per UDRP practice typically would not to be taken into consideration when examining the identity or similarity between the Complainant's trademark and the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied the first requirement of paragraph 4(a) of the Policy.

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.

Having reviewed the available record, the Panel finds the Complainant has established a 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.

The Panel considers that there is no evidence of the existence of any rights or legitimate interests. There is no business or legal relationship between the Complainant and the Respondent and the Complainant has neither authorized nor licensed the Respondent to use its trademarks. According to the evidence provided by the Complainant, a quick search in a trademark database reveals that the Respondent has no trademark rights in respect of the name "Marlnk".

Moreover, the disputed domain name points to a parking page featuring PPC links. It is most likely that the Respondent has attempted to take advantage of the well-known trademark MARLINK and direct users to its own website.

Additionally, noting the email servers have been set up on the disputed domain name, there is a possibility that the disputed domain name may be used for phishing, an activity can never confer rights or legitimate interests on a respondent.

Accordingly, the Panel finds 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.

Although 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, 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.

In this case, the Panel notes several circumstances which appear to be an inference of bad faith:

- the privacy service was employed to register the disputed domain name;
- the Respondent "knew or should have known" of the Complainant's prior trademark rights and registered a disputed domain name incorporating the trademark, in which it had no rights or legitimate interests;
- the disputed domain name has most likely been registered with the aim of taking advantage of the well-known trademark MARLINK;
- the disputed domain name is a misspelling of the Complainant's trademark;
- the disputed domain name points to a parking page including PPC links;
- the email servers have been activated so that emails with addresses "@marlnk.com" can be sent/received, potentially for phishing and scam. The Complainant has been the target of several phishing and scam attacks recently.

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.

Consequently, 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 <marlnk.com> be transferred to the Complainant.

/Dr. Beatrice Onica Jarka/
Dr. Beatrice Onica Jarka
Sole Panelist
Date: January 10, 2025