

ADMINISTRATIVE PANEL DECISION

Tsurt LLC v. marilynn Walker, The Bell Touch
Case No. D2024-4913

1. The Parties

Complainant is Tsurt LLC, United States of America (“United States”), represented by Sideman & Bancroft LLP, United States.

Respondent is marilynn Walker, The Bell Touch, United States.

2. The Domain Name and Registrar

The disputed domain name <t-surt.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 27, 2024. On November 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 27, 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 (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on November 29, 2024, 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 December 3, 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 Respondent of the Complaint, and the proceedings commenced on December 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 24, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 26, 2024.

The Center appointed Timothy D. Casey as the sole panelist in this matter on January 2, 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

Complainant is a clothing brand and retailer for musicians and music bands that was founded in 2007. Complainant sells its products through its website “www.tsurt.com” and other retail partners, and acts as the exclusive merchandizer with music venues where Complainant’s licensed musicians and music bands play.

Complainant has registrations for trademarks including TSURT in the United States and around the world (the “TSURT Marks”) as follows:

Mark	Jurisdiction	Class(es)	Registration No.	Registration Date
TSURT	United States	25	3528163	November 4, 2008
TSURT	United States	25, 35	7236964	December 5, 2023

The disputed domain name was registered September 3, 2024. The disputed domain name currently resolves to a “Launching Soon” website that seeks subscribers to sign up for updates. Complainant provided evidence indicating that the disputed domain name was utilized in emails and other documentation impersonating an employee of Complainant and Complainant related such use to an attempt to defraud third parties.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that it has rights in the TSURT Marks, as evidenced herein, which it has used at least since 2007, and that the disputed domain name is confusingly similar to the TSURT Marks because the disputed domain name incorporates the entirety of the TSURT Marks and the addition of a hyphen between the letters “t” and “s” does nothing to prevent a finding of confusing similarity.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name because Respondent is not commonly known by the disputed domain name and has only used the disputed domain name in email attempting to impersonate Complainant for fraudulent purposes. Complainant further contends that Respondent’s use of the disputed domain name is not a bona fide offering of goods or services and is not a legitimate noncommercial or fair use. Complainant contends there is no relationship between Complainant and Respondent, Complainant has not licensed the TSURT Marks to Respondent or otherwise authorized Respondent to use the disputed domain name.

Complainant contends that Respondent’s registration of the disputed domain name was in bad faith. Complainant contends that the TSURT Marks have been used by Complainant for more than sixteen years prior to registration of the disputed domain name and based on Respondent’s use of the disputed domain name, Respondent had actual knowledge of Complainant and Complainant’s right in the TSURT Marks prior to registering the disputed domain name.

Complainant contends that Respondent’s use of the disputed domain name to impersonate Complainant and employees of Complainant through a fraudulent email scheme constitutes bad faith use.

B. Respondent

Respondent did not reply to 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 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.

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. Accordingly, the disputed domain name is identical and/or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, a hyphen, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Panels have held that the use of a domain name for illegitimate activity here, claimed phishing and impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant's mark and perpetrated an attempt to impersonate Complainant and Complainant's employees for illegitimate purposes.

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.

Panels have held that the use of a domain name for illegitimate activity here, claimed phishing and impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that 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 <t-surt.com> be transferred to Complainant.

/Timothy D. Casey/

Timothy D. Casey

Sole Panelist

Date: January 17, 2025