

ADMINISTRATIVE PANEL DECISION

**Aeromotive, LLC v. Domain Administrator, Fundacion Privacy Services Ltd.
Case No. D2025-1123**

1. The Parties

The Complainant is Aeromotive, LLC, United States of America (United States), represented by Fish & Richardson P.C., United States.

The Respondent is Domain Administrator, Fundacion Privacy Services Ltd., Panama.

2. The Domain Name and Registrar

The disputed domain name <aeromotive.com> is registered with Media Elite Holdings Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 19, 2025. On March 19, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 20, 2025, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 March 27, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 16, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 17, 2025.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on April 28, 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 makes fuel pumps and fuel delivery system components.

The Complainant was founded in July 1994 by a race car driver, Steve Matusek, and has been promoting its products since then under or by reference to the trademark AEROMOTIVE. By 2002, the Complainant was reporting annual revenues of USD 3 million. Mr Matusek continued as the owner of the company until 2020 when it came into the ownership of the current owners.

The Complainant owns United States Registered Trademark No 2,751,659, AEROMOTIVE, which has been registered in the Principal Register since August 19, 2003, in respect of fuel pumps and related components in International Class 7.

The Complainant promotes its products by reference to the trademark AEROMOTIVE from its website at "www.aeromotiveinc.com". The Complainant first registered this domain name in 1995 when it discovered the disputed domain name was unavailable.

According to the Whois report, the disputed domain name was registered on August 20, 1995.

According to a Domain Tools "Domain Report" dated February 12, 2025, there have been at least two registrants of the disputed domain name over time. Between October 27, 2014, and April 22, 2018, the registrant was "Domain Admin, Whois Privacy Corp" of Nassau. By August 1, 2018, however, the Respondent was shown as the registrant.

Coinciding or around the time of the nominal change in registrant, there was also a change in the manner of use of the disputed domain name. When Domain Admin, Whois Privacy Corp was the registrant, the disputed domain name resolved to a website with links to products for sale on Amazon.

After the Respondent became the registrant, however, the disputed domain name resolved to a parking page with pay-per-click (PPC) links to advertisements for the sale of fuel pumps and fuel systems and a message exhorting the public to "Buy this domain". When the Complainant followed that link, it elicited an offer to sell the disputed domain name for USD 30,000.

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 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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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 proven ownership of at least the registered trademark AEROMOTIVE.

The comparison of the disputed domain name to the Complainant's trademark simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. 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 e.g., [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.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

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

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a 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 Respondent became the registrant of the disputed domain name well after the Complainant began using the trademark and also well after the Complainant registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The use of the disputed domain name to offer it for sale and, pending that sale, to generate revenue through PPC links does not qualify as a legitimate noncommercial or fair use for the purposes of paragraph 4(c)(iii) of the Policy.

In addition, it does not qualify as a good faith offering of goods or services for the purposes of paragraph 4(c)(i) especially where the trademark appears to be an invented or coined term and the Respondent appears to be targeting the Complainant's trademark.

These matters, taken together, are sufficient to establish a prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that prima facie case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

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., *Group One Holdings Pte Ltd v. Steven Hafto* WIPO Case No. [D2017-0183](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

That appears to be the case in the circumstances of this proceeding.

First, through the PPC links at the website, the disputed domain name is being used in connection with fuel pumps and fuel systems. The term "aeromotive" in particular is an invented or coined term, however, and not descriptive of such products. On the record in this case, it is of significance in relation to such products only as the Complainant's trademark for its brand of fuel pumps and components.

Secondly, the Respondent offered the disputed domain name for sale for the price of USD 30,000. That is far in excess of the ordinary costs for registering a domain name in the ".com" space. It is not known whether the Respondent became the registrant of the disputed domain name as a result of an auction or some other transaction. Even so, it appears highly likely that any value of the disputed domain name over and above ordinary registration costs is attributable to its correspondence to the Complainant's trademark.

Thirdly, the Domain Tools report submitted by the Complainant shows that the Respondent has registered a number of other domain names which are based on third party trademarks. These include <addidasoutdoor.com>, <barclaycard.us>, <coldstonecresmery.com>, <helpmicrosft.com>, <hertz.com>, <lowermycarlian.com>, <mineceraft.com>, and <peacockktv.com>. Indeed the Respondent has previously been found to have registered the domain name <mytoyotaguard.com> in bad faith under the Policy: *Toyota Motor Sales, U.S.A., Inc. v. Domain Administrator, Fundacion Privacy Services LTD* WIPO Case No [D2018-0338](#).

In these circumstances, it appears that the Respondent registered the disputed domain name to take advantage of its significance as the Complainant's trademark. That conduct appears to fall within the scope of paragraph 4(b)(i) of the Policy which gives as an example of registration and use 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".

In addition, the manner of use – attempting to generate revenues from the trademark significance of the disputed domain name through PPC advertising (pending sale) is conduct proscribed by paragraph 4(b)(iv):

"(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."

Accordingly, the Panel finds that the Respondent has registered the disputed domain name in bad faith and subsequently used it in bad faith.

Therefore, 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 <aeromotive.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: May 12, 2025