

ADMINISTRATIVE PANEL DECISION

Austin Industries, Inc. v. Chineye Prosper
Case No. D2025-1854

1. The Parties

The Complainant is Austin Industries, Inc., United States of America (“United States”), represented by Slates Harwell Campbell, LLP, United States.

The Respondent is Chineye Prosper, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <austin-indscorp.com> is registered with Metaregistrar BV (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 8, 2025. On May 9, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 12, 2025, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 12, 2025, 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 amendment to the Complaint on May 14, 2025.

The Center verified that the Complaint together with the amendment to 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 May 15, 2025. In accordance with the Rules, paragraph 5, the due date for Response was June 4, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 10, 2025.

The Center appointed Kaya Köklü as the sole panelist in this matter on June 18, 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 company founded in 1918 in the United States. It is primarily active in the field of providing construction services. Ever since, the Complainant actively uses AUSTIN as part of its company name and to promote and offer its construction services. It has obtained significant market presence in the United States. A stylized "A", which has been registered as United States Trademark Registration No. 4829969 on October 13, 2015, claiming protection for various construction services as protected in class 37, further indicates first use in commerce on July 1, 1974.

Additionally, the Complainant has registered and operates its main website at "www.austin-ind.com" since at least 1996.

The Respondent is reportedly located in Nigeria.

The disputed domain name was registered on December 7, 2024.

The case record contains no indication that the disputed domain name was ever associated with an active website. However, according to undisputed evidence provided in the Complaint, the disputed domain name has been used multiple times for sending out emails to the Complainant's vendors, pretending that these emails have been sent by one of the Complainant's vice presidents, falsely indicating that the Complainant is interested in buying materials or parts from them. In some of these emails, the respective recipients were asked to send materials on credit and/or generated invoices to the Complainant.

At the date of the Decision, the disputed domain name resolves to a landing page indicating that the respective website has been suspended.

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.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

(i) the disputed domain name is identical or confusingly similar to a trademark 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 has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel might, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)").

In this regard, it is noted that an independent Internet search for public information regarding the history of the Complainant and its trademark has been performed by the Panel. The competence of the Panel to perform such independent search is undisputed and in line with previous UDRP decisions, such as *Hesco Bastion Limited v. The Trading Force Limited*, WIPO Case No. [D2002-1038](#). [WIPO Overview 3.0](#), section 4.8.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistently with the consensus views stated therein.

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 3.0](#), section 1.7.

Except a trademark registration for a stylized "A", the Complainant did not provide any reference to a registered AUSTIN trademark. However, based on its independent Internet search, the Panel notes that the Complainant is a long-standing company using the AUSTIN mark as a company name and as a designation of its services since 1918, and hence, for more than a hundred years. Bearing also in mind the undisputed market presence of the Complainant, the Panel has no doubt that the AUSTIN mark has become a distinctive identifier which relevant customers associate with the Complainant's construction services. The Panel therefore finds the Complainant has established unregistered trademark rights in AUSTIN for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The entirety of the AUSTIN mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms and letters, here "inds" (presumably standing for "industries") and "corp" (presumably standing for "corporation") may bear on assessment of the second and third elements, the Panel finds such additions do 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 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.

Even more, the Panel notes that the disputed domain name is not only confusingly similar to the Complainant's AUSTIN mark but also almost identical to its officially used domain name <austin-ind.com>, which per se results in a risk of implied affiliation. Bearing also in mind that the disputed domain name has already been used by the Respondent to mislead third parties in a false belief that emails sent from the disputed domain name originate from the Complainant and one of its vice presidents, the Panel has no doubt that the Respondent's intent is to impersonate the Complainant for fraudulent activities, which in view of the Panel can never confer rights or legitimate interests upon the 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.

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 the present case, the Panel notes that the Respondent must have had the Complainant and its AUSTIN mark in mind when registering the disputed domain name, particularly considering the inherently misleading composition of the disputed domain name, which comprises the Complainant's AUSTIN mark and is also almost identical to the Complainant's officially used domain name <austin-ind.com>. It is obvious to the Panel that the Respondent has deliberately chosen the disputed domain name to target the Complainant.

Even though the case record does not contain any evidence whether the disputed domain name ever resolved to an active website, the Panel notes the ongoing threat of the inherently misleading disputed domain name to the Complainant, since the disputed domain name has already been used by the Respondent multiple times to mislead third parties in a false belief that emails sent from the disputed domain name originate from the Complainant and/or one of its vice presidents. The use of the disputed domain name to send fraudulent emails to third parties impersonating one of the Complainant's representatives is a per se illegitimate if not illegal activity that can never confer rights or legitimate interests on a respondent, and moreover such behaviour is manifestly considered evidence of bad faith use. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <austin-indscorp.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: July 2, 2025