

ADMINISTRATIVE PANEL DECISION

Dan Foam ApS v. phillip kyle
Case No. D2025-5001

1. The Parties

The Complainant is Dan Foam ApS, Denmark, represented by Vice Cox & Townsend PLLC, United States of America (“United States”).

The Respondent is phillip kyle, United States.

2. The Domain Name and Registrar

The disputed domain name <tempurseally.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 2, 2025. On December 3, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy Service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 5, 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 December 8, 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 December 9, 2025. In accordance with the Rules, paragraph 5, the due date for Response was December 29, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 30, 2025.

The Center appointed Mladen Vukmir as the sole panelist in this matter on January 8, 2026. 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 Dan Foam ApS, a corporation organized in 1999 under the laws of Denmark and doing business in the United States and around the world through its related companies Tempur-Pedic Management, LLC, Tempur World, LLC, and Tempur Sealy International, Inc. Tempur Sealy International, Inc., the parent company of the subsidiaries Tempur-Pedic Management, LLC and Dan-Foam ApS developed, manufactured, and marketed visco-elastic foam mattresses, cushions, pillows, and other comfort products and accessories.

The Complainant is the owner of a number of TEMPUR-PEDIC, TEMPUR, and TEMPUR SEALY marks in the United States, including the TEMPUR SEALY word trademark registered in the United States on June 21, 2016, under the registration number 4980596 for goods and services in class 35 ("TEMPUR" marks).

The Complainant owns and operates company websites accessible through the domain names <tempurpedic.com> (registered in 1996) and <tempursealy.com> (registered in 2023), among others.

The Respondent is apparently with an address in the United States.

The disputed domain name was registered on November 11, 2025. At the time of this Decision, the disputed domain name resolves to an inactive website.¹ According to the Complaint, the disputed domain name has been flagged by Complainant's watch service as a "phishing" site with the following message:

"This site is involved in a supply chain phishing attack impersonating your organization. The messages include observed tactics such as inquiring about open invoices, requesting remittance for past-due payments, attempts to change banking or payment details, and redirecting funds to fraudulent accounts. In some cases, the actors may also attempt to alter shipping information to reroute packages to unauthorized destinations or attempt to open a line of credit to make purchases. This activity poses significant financial, data, and operational risks to all parties being targeted and reputational damage that can compromise trusted vendor relationships."

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:

- (i) Long prior to the registration of the disputed domain name, the Complainant has, along with its related companies Tempur-Pedic Management, LLC, Tempur World, LLC, and Tempur Sealy International, Inc.

¹This information has been determined by the Panel, as the Complainant neglected to include evidence on the use of the disputed domain name at the time of the Complaint. Noting in particular the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. [WIPO Overview 3.0](#), section 4.8.

spent millions of dollars in advertising for products offered in connection with TEMPUR marks and has realized millions of dollars in sales of said products. As a result of the widespread and continuous use and promotion, TEMPUR marks have achieved tremendous fame and distinctiveness and are widely known and recognized as source identifiers for a variety of goods and services;

(ii) The disputed domain name is identical or confusingly similar to the Complainant's registered TEMPUR marks. In fact, the disputed domain name is nearly identical to Complainant's TEMPUR SEALY mark, except the Respondent has added an extra letter "l" in the word "sealy". Moreover, the addition of the generic Top-Level Domain ("gTLD") ".com" does not distinguish the disputed domain name from the TEMPUR marks;

(iii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant did not grant any authorization to the Respondent to use the TEMPUR marks, nor is the Respondent a licensee of the Complainant. Moreover, the Respondent is not associated with the Complainant in any way nor is the Respondent operating a legitimate business under the disputed domain name. Additionally, the TEMPUR marks are strong trademarks with no other known meaning and as such the Respondent would not legitimately choose the disputed domain name unless seeking to make an association with the Complainant; and

(iv) The Respondent has registered the disputed domain name in bad faith. The disputed domain name was registered and is being used primarily with the intent to disrupt the business of the Complainant with knowledge of the Complainant by defrauding its retail partners. The Respondent knows or should know that Internet users looking for websites containing information about the TEMPUR products and services are likely to encounter the disputed domain name, which is merely a misspelling of the TEMPUR SEALY mark.

B. Respondent

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 Panel finds the mark is recognizable within the disputed domain name. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

Minor changes such as adding an extra letter to a mark are classic examples of typo-squatting and do not prevent a finding of confusing similarity. Panels consistently held that misspellings or extra characters leave the mark recognizable and satisfy the first element.

Here, the inclusion of the extra letter "l" in the disputed domain name appears to be a misspelling of the TEMPUR SEALY mark. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9.

The gTLD ".com" is a standard registration requirement and as such may be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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.

The Complainant has not authorized the Respondent to use the Complainant's TEMPUR SEALY mark. There is no evidence that the Respondent has been using the disputed domain name at all, either in connection with a bona fide offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name, nor is there any indication that the Respondent is commonly known under the disputed domain name. On the contrary, the disputed domain name does not resolve to an active website.

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 the Respondent has registered the disputed domain name which contains the Complainant's TEMPUR SEALY trademark. The disputed domain name resolves to an inactive website. The available evidence shows that registration and use of the Complainant's TEMPUR SEALY trademark predate the registration of the disputed domain name. The Panel is satisfied that the Complainant's TEMPUR SEALY mark is both distinctive and has been extensively used in connection to its area of business (offering bedding-related goods and services). The Panel therefore accepts that the TEMPUR SEALY trademark is well-known within the bedding industry. Bearing in mind the above, the Panel is of the opinion that it is more likely than not that the Respondent registered and used the disputed domain name being aware of the Complainant and its well-known TEMPUR SEALY trademark.

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 found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Respondent registered the disputed domain name incorporating the entirety of the Complainant's well-known TEMPUR SEALY trademark without any authorization from the Complainant. Moreover, the Panel is of the opinion that the Respondent has deliberately targeted the Complainant when registering the disputed domain name, due to the obvious typo-squatting in the form of misspelling the TEMPUR SEALY mark with an extra letter “l”. Such action from the Respondent indicates an intent to exploit the Complainant's established goodwill.

The Respondent is passively holding the disputed domain name and there is no evidence of any good-faith use, which reinforces the conclusion of bad faith.

The Panel further draws adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#), section 4.3).

These factors collectively support the finding that the disputed domain name was registered and used in bad faith, in line with the criteria outlined in paragraphs 4(a)(iii) and 4(b) of 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 <tempurseally.com> be transferred to the Complainant.

/Mladen Vukmir/

Mladen Vukmir

Sole Panelist

Date: January 22, 2026