ADMINISTRATIVE PANEL DECISION
Technical Communities, Inc. v. Dan Diefendorf, The TestMart, Inc.
Case No. D2026-2712

1. The Parties

Complainant is Technical Communities, Inc., United States of America ("United States"), represented by Niesar & Vestal LLP, United States.

Respondent is Dan Diefendorf, The TestMart, Inc., United States, represented by Rimon, P.C., United States.

2. The Domain Name and Registrar

The disputed domain name <thetestmart.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 June 22, 2026. On June 23, 2026, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 23, 2026, 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 June 25, 2026, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed a first amended Complaint on June 29, 2026, and a second amended Complaint on July 13, 2026.

The Center verified that the Complaint together with the amended Complaints 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 July 10, 2026. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2026. The Parties jointly requested suspension on July 16, 2026, and the proceedings were suspended the same day. The proceedings were reinstituted on September 18, 2026.

The Response was filed with the Center on September 15, 2026. Complainant submitted a supplemental filing on September 16, 2026, to which Respondent objected and also requested to submit its own supplemental filing, on September 16, 2026.

The Center appointed Timothy D. Casey, William F. Hamilton, and Georges Nahitchevansky as panelists in this matter on October 12, 2026. The Panel finds that it was properly constituted. Each member of 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 Delaware corporation based in San Mateo, California. Complainant operates an online marketplace and quarterly catalog of test and measurement equipment sold principally to United States government, military, and defense purchasers, through its website at the domain name <testmart.com> (Exhibit 4 to the Complaint). Complainant's catalog also lists software products, as shown in captures of May 2026 (Exhibits 12, and 13 to the Complainant) and catalog entries (Exhibit 8 to the Complaint).

Complainant states that it has used TESTMART in commerce since November 1, 1999. Complainant owns United States Patent and Trademark Office ("USPTO") Registration No. 2,423,377 for TESTMART (the "Mark"), registered on January 23, 2001, in International Classes 35 and 42 for electronic retailing via the Internet in the field of testing and measuring equipment and for providing information in the field of test and measuring equipment (Exhibit 2 to the Complaint). Complainant also owns USPTO Registration No. 3,640,087 for GSAMART BY TESTMART, registered on June 16, 2009, in International Class 35 (Exhibit 3 to the Complaint).

The disputed domain name was created in July 2020 (Exhibit 6 to the Complaint). Respondent is The TestMart, Inc., a Delaware corporation incorporated on February 21, 2023, and registered to do business in Florida on December 26, 2024, with its principal office in Miami, Florida (Annex 2 to the Response; Exhibit 11 to the Complaint). Respondent states that its business began in New Zealand on June 18, 2020, when 360Testing Limited was incorporated, trading as The Test Mart, and that 360Testing Limited is now its wholly owned subsidiary (paragraph 5 of the Diefendorf Declaration). A New Zealand Companies Office extract lists Respondent as the sole shareholder of 360Testing Limited (Annex 1 to the Response).

Respondent provides a cloud-based platform for automated testing of Microsoft Dynamics 365 and other enterprise software. Respondent states that it does not sell test, measurement, or laboratory equipment or any physical equipment, and that it does not sell to United States government or defense purchasers (paragraph 8 of the Diefendorf Declaration).

Respondent has submitted a January 18, 2021, employment agreement identifying the employer as "360Testing Limited, trading as The Test Mart" (Annex 4 to the Response); archived captures of its website at the disputed domain name dated from June 24, 2021, through December 5, 2022 (Annex 3 to the Response); an invoice dated June 1, 2021, for a "TheTestMart Automation Testing Platform" subscription, and later invoices issued under the name TheTestMart, including by The TestMart, Inc. beginning in 2023 (Annex 7 to the Response); and a purchase agreement signed on July 29, 2022, between "360Testing Limited trading as TheTestMart" and a New Zealand customer (Annex 6 to the Response). In 2025, Respondent redesigned its website and introduced the name HORIZON for its platform (paragraph 12 of the Diefendorf Declaration; Annex 8 to the Response).

Before filing the Complaint, Complainant sent a cease-and-desist letter to Respondent. Respondent states that it received a letter from Complainant's counsel on March 25, 2026, and did not receive an earlier letter that Complainant's counsel says was sent on February 3, 2026 (paragraph 11 of the Diefendorf Declaration). The parties discussed settlement and jointly requested suspension of this proceeding for that purpose.

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.

Complainant contends that it has used the Mark since 1999 and that the disputed domain name incorporates the Mark in its entirety, with only the article "the" and the generic Top-Level Domain ("gTLD") added. Complainant contends that the parties both operate in the testing industry and serve enterprise purchasers, at least because Complainant's catalog lists software products and the manufacturers it represents offer both hardware and software testing.

Complainant contends that it has not authorized Respondent to use the Mark, that Respondent was not commonly known by the disputed domain name before its registration, and that Respondent's use of the disputed domain name is not a bona fide offering of goods or services.

Complainant contends that Respondent registered and used the disputed domain name with knowledge or willful blindness of Complainant's rights in the Mark. Complainant relies on constructive notice of its registrations under United States law, Respondent's alleged failure to conduct a trademark clearance search before registration, and an alleged breach of the registrant's representations under paragraph 2 of the Policy. Complainant contends that Respondent likely first checked the availability of the domain name <testmart.com> and, finding it unavailable, chose the disputed domain name. Complainant also contends that in summer 2025 Respondent changed its website from a yellow-and-white to a blue-and-white color scheme resembling Complainant's website, and that its initial-capital "TheTestMart" presentation resembles Complainant's use of the Mark. Complainant contends that Respondent sought to attract enterprise purchasers within Complainant's field by creating a likelihood of confusion, within paragraph 4(b)(iv) of the Policy.

B. Respondent

Respondent contends that Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

Respondent contends that it registered the disputed domain name in July 2020, weeks after its New Zealand business was formed, because it was the name under which that business traded, and that it has used the name and the disputed domain name continuously since. Respondent contends that it did not know of Complainant or the Mark until it received a demand letter on March 25, 2026, that it never checked or tried to register the domain name <testmart.com>, and that no confusion has occurred in six years of coexistence.

Respondent contends that the parties' businesses differ: it sells software testing services for Microsoft Dynamics 365 to enterprise information technology purchasers, while Complainant sells physical test and measurement equipment, principally to government and defense purchasers. Respondent contends that its 2025 redesign accompanied its HORIZON product identity, that blue is a common color in enterprise software, that its initial-capital style dates from April 2021, and that Complainant's software listings do not place the parties in the same market.

Respondent requests a finding of Reverse Domain Name Hijacking, contending that Complainant waited six years to file the Complaint and filed the Complaint despite its own exhibits showing Respondent's 2020 registration and a software business operating under the disputed domain name by May 2022.

6. Discussion and Findings

Preliminary Matter: Supplemental Filings

Complainant submitted an unsolicited supplemental filing on September 16, 2026, to which Respondent objected and in connection with which Respondent asked to submit its own filing. The Rules make no provision for supplemental filings except at the request of the Panel (Rules, paragraphs 10 and 12). A party submitting an unsolicited supplemental filing should show its relevance to the case and why the information could not have been provided earlier. WIPO Overview of WIPO Panel Views on Select UDRP Questions ("WIPO Overview 3.1"), section 4.6. Complainant has not made that showing. Response answered allegations made in the Complaint, and the Panel finds the record sufficient to decide the case. The Panel has therefore not considered Complainant's supplemental filing, and Respondent's request to submit its own filing is moot.

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 3.1, section 1.7.

Complainant has shown rights in respect of a trademark for the purposes of the Policy. WIPO Overview 3.1, section 1.2.1.

The entirety of the Mark is reproduced within the disputed domain name <thetestmart.com>. WIPO Overview 3.1, section 1.7. The ".com" gTLD is disregarded under the first element. WIPO Overview 3.1, section 1.11.1. The addition of the article "the" does not prevent a finding of confusing similarity, although its nature may bear on the second and third elements. WIPO Overview 3.1, section 1.8.

Respondent's contentions that the parties offer different goods and services and that no confusion has occurred concern matters that are not relevant at this stage and are addressed to the extent relevant under the third element. WIPO Overview 3.1, section 1.7. Accordingly, the disputed domain name is confusingly similar to the Mark for the purposes of the Policy.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

In view of the Panel's findings under the third element below, the Panel need not decide whether Respondent has rights or legitimate interests in the disputed domain name.

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(a)(iii) of the Policy requires that the disputed domain name have been both registered and used in bad faith. A finding of bad faith registration requires that the respondent knew of and targeted the complainant's mark when it registered the disputed domain name. WIPO Overview 3.1, section 3.2.2.

The record shows that the disputed domain name was registered in July 2020, weeks after the formation in New Zealand of 360Testing Limited, which traded as The Test Mart (Annex 1 to the Response; Exhibit 6 to the Complaint). Respondent's documents show the business operating under that name, and at the disputed domain name, in its early period (Annexes 3, 4, 6, and 7 to the Response). Complainant's evidence shows a catalog of test and measurement equipment sold principally to United States government

and defense purchasers (Exhibit 4 to the Complaint). Respondent offers software test automation for Microsoft Dynamics 365 to enterprise customers. Complainant has submitted no evidence of any presence or reputation in New Zealand, of any trademark registrations or rights for the Mark in New Zealand, or of a reputation for the Mark outside its United States government niche.

Complainant contends that Respondent knew or should have known of the Mark, relying on constructive notice, an asserted duty to search trademark records, the parties' shared field of testing, and an asserted breach of the registrant's representations under paragraph 2 of the Policy. The question under the Policy is whether Respondent in fact registered the disputed domain name to target the Mark, which turns on knowledge and intent and not on notice imputed by national law. Respondent states, through the declaration of its Chief Executive Officer, that it did not know of Complainant until March 25, 2026, and chose the disputed domain name because it was the trading name of its business (paragraphs 9 through 13 of the Diefendorf Declaration). Nothing in the record contradicts that account. The terms "test" and "mart" are ordinary English words that a testing business could combine without reference to Complainant. Complainant's suggestion that Respondent first checked the availability of the domain name <testmart.com> is not supported by evidence and is denied by Respondent. Complainant's evidence that it sells software consists of captures from 2026 and does not show what it offered in 2020.

Complainant also points to Respondent's 2025 website redesign and its initial-capital "TheTestMart" presentation. Respondent's documents show the initial-capital form in use in 2021 (Annex 3 to the Response), and Respondent states that the redesign accompanied its HORIZON product identity. The Panel need not resolve the parties' competing accounts of the redesign. Under the Policy the question is Respondent's purpose when it registered the disputed domain name. Subsequent use that Complainant considers close to its own branding cannot establish bad faith registration in 2020. Whether Respondent's current branding infringes Complainant's trademark rights is a matter for a court of competent jurisdiction, on which the Panel expresses no view.

The record does not document when the registrant of record changed from the entity that first registered the disputed domain name to Respondent, and Complainant did not plead a transfer. The record shows that 360Testing Limited is a wholly owned subsidiary of Respondent and that the business has operated under the same name and at the disputed domain name throughout the period shown by the documents. The record gives the Panel no basis to find that any change in the holder of the disputed domain name within that group was a new registration made with the Mark in view.

The evidence in the case file as presented does not indicate that Respondent's aim in registering the disputed domain name was to profit from or exploit the Mark.

The Panel finds the third element of the Policy has not been established.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. WIPO Overview 3.1, section 4.16.

Respondent requests such a finding. Complainant holds a registered mark, the disputed domain name incorporates it in full, there is a claim that the website presentation created infringement, and the parties corresponded before the Complaint was filed and jointly sought suspension of this proceeding to attempt settlement. Delay in filing does not bar a complaint under the Policy. WIPO Overview 3.1, section 4.17. The Complaint did not succeed, but the Panel does not find that it was brought in bad faith.

The Panel declines to find that the Complaint was brought in bad faith or constitutes an attempt at Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons, the Complaint is denied.

/William F. Hamilton/
William F. Hamilton
Presiding Panelist

/Timothy D. Casey/
Timothy D. Casey
Panelist

/Georges Nahitchevansky/
Georges Nahitchevansky
Panelist
Date: October 26, 2026