

ADMINISTRATIVE PANEL DECISION

Space Exploration Technologies Corp. dba SpaceX v. Domains

By Proxy, LLC / John Jordan

Case No. DCO2022-0019

1. The Parties

Complainant is Space Exploration Technologies Corp. dba SpaceX, United States of America (“United States”), represented by Polsinelli PC, United States.

Respondent is Domains By Proxy, LLC, United States / John Jordan, United States.

2. The Domain Name and Registrar

The disputed domain name <spacepay.co> 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 March 3, 2022. On March 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 7, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on March 9, 2022, 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 March 10, 2022.

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 March 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was stated as April 7, 2022. On March 19, 2022, Respondent provided an informal e-mail response to the Center stating that he wished to delete the disputed domain name. On March 21, 2022, the Center sent a Possible Settlement email to the parties. On March 24, 2022, Complainant requested the suspension of the proceedings. On May 27, 2022, the proceedings were reinstated, informing the Parties

that the new due date for the submission of a response was June 10, 2022. The Center notified the Parties of the commencement of the Panel appointment process on June 20, 2022.

The Center appointed Ingrida Kariņa-Bērziņa as the sole panelist in this matter on June 30, 2022. 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 an aerospace manufacturer also providing space transportation and communications services. It is the proprietor of numerous registrations for its SPACEX mark, including the following:

- Swiss Trademark No. P-513756 for SPACEX (word mark), registered on August 27, 2003 for goods and services in classes 9, 12 and 39;
- United States Trademark No. 3066872 for SPACEX (word mark), registered on March 7, 2006 for goods and services in classes 12 and 39.

The disputed domain name was registered on January 7, 2022. At the time of this Decision, it resolved to a website featuring pay-per-click links. The record contains evidence that, at the time of filing the Complaint, it resolved to a website offering services by an entity calling itself "SpaceX Pay".

5. Parties' Contentions

A. Complainant

Complainant's contentions may be summarized as follows:

Under the first element, Complainant states that the disputed domain name is nearly identical to Complainant's well-known SPACEX mark, as it incorporates the entirety of Complainant's mark with the addition of the descriptive term "pay". The Top-Level Domain ".co" does not diminish the confusing similarity.

Under the second element, Complainant states that Respondent registered the disputed domain name to perpetrate a spoofing scheme to defraud Internet users by impersonating Complainant. Respondent is not making any legitimate noncommercial or fair use of the disputed domain name. Respondent has never been commonly known by the disputed domain name.

Under the third element, Complainant states that it is clear from the circumstances that Respondent was aware of Complainant and its SPACEX mark when registering the disputed domain name, which incorporates Complainant's distinctive and well-known mark in its entirety. The disputed domain name resolved to a fraudulent website offering services, thereby misleading consumers and diverting them from Complainant's official website.

Complainant requests transfer of the disputed domain name.

B. Respondent

On March 19, 2022, Respondent provided an e-mail message stating the following: "I have received the complaint made for my domain. I immediately contacted Godaddy to delete my domain. However, Godaddy said that he could not delete the domain and that the reason was legal action. When I created my domain, I did not know about copyright. I want to delete my domain. please delete my domain now."

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

Complainant has provided evidence establishing that it has trademark rights in the SPACEX mark through registrations in numerous jurisdictions including Switzerland and the United States. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See [WIPO Overview 3.0](#), section 1.2.1.

In comparing Complainant’s marks with the disputed domain names, the Panel finds that the disputed domain name is confusingly similar to Complainant’s mark. The disputed domain name begins with Complainant’s SPACEX mark, followed by the dictionary term “pay”. It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will be considered confusingly similar to that mark. Moreover, where the relevant trademark is recognizable within the disputed domain names, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

It is the well-established view of UDRP panels that a country-code Top-Level Domain (“ccTLD”), such as “.co”, is viewed as a standard registration requirement and as such may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1, and cases cited thereunder).

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not authorized by Complainant and has no rights in the SPACEX mark. The disputed domain name comprises Complainant’s mark together with a dictionary term. Such use cannot confer rights or legitimate interests.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent has not provided any rebuttal of Complainant’s *prima facie* case and has therefore not proved rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is commonly known by the disputed domain name, or that there are any circumstances or activities that would establish Respondent’s rights therein. The disputed domain name consists of Complainant’s SPACEX mark plus the term “pay”. Even where a domain name consists of a trademark plus an additional term, UDRP

panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. In this case, noting the nature of the disputed domain name, and the well-known character of Complainant's SPACEX mark, the Panel finds that the disputed domain name carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

At the time of filing the Complaint, the disputed domain name resolved to a website featuring Complainant's mark in connection with payment services and now it resolves to a website featuring pay-per-click links. Evidence of such activity using Complainant's mark indicates a lack of rights or legitimate interests. See [WIPO Overview 3.0](#), sections 2.5.3 and 2.9.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain name. Complainant's rights in its SPACEX mark predate the registration of the disputed domain name by nearly two decades. The disputed domain name reflects Complainant's mark in its entirety, together with the dictionary term "pay". The disputed domain name previously resolved to a website purporting to offer "SpaceX Pay" services. The Panel finds that Respondent thereby attempted to create an association with Complainant for commercial gain, indicating bad faith in registration of the disputed domain name. See [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1.

The current use of the disputed domain name to redirect to a pay-per-click website is, under the circumstances, further evidence of bad faith. See [WIPO Overview 3.0](#), section 3.5. Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name and the Panel does not find any such use plausible. All these circumstances clearly indicate bad faith in the registration and use of the disputed domain name.

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) 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 <spacepay.co> be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: July 14, 2022