

ADMINISTRATIVE PANEL DECISION

Theorem Partners LLC v. peter any
Case No. DCO2023-0105

1. The Parties

Complainant is Theorem Partners LLC, United States of America, represented by Shartsis Friese LLP, United States of America ("U.S.").

Respondent is peter any, U.S.

2. The Domain Name and Registrar

The disputed domain name <theoremip.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 December 7, 2023. On December 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 7, 2023, 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 December 20, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 22, 2023.

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 January 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 28, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on February 2, 2024.

The Center appointed Lynda J. Zadra-Symes as the sole panelist in this matter on February 9, 2024. 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 investment management and investment advisor services firm. Complainant has used the mark THEOREM since at least January of 2016 to offer and promote its investment management and investment advisory services. Complainant owns a federal registration for the word mark THEOREM (U.S. Registration No. 6311779, registered April 6, 2021).

Complainant also operates a website at the domain name, <theoremip.com>, which it uses for all of its public-facing, business activities and its employee's email addresses. In addition, Complainant owns the domain name, <theoremtech.com>, among others.

The disputed domain name was registered on November 27, 2023. At the time of filing of the Complaint, the disputed domain name resolved to a website that displayed a collection of stock photographs, images and text, with the THEOREM mark used as the business name. The text stated "THEOREM is an advisory firm specializing in board of director and executive level mandates across private and public sectors. We've successfully completed assignments in multiple sectors: technology, financial services, biotechnology, consumer products and manufacturing".

Complainant submitted a complaint with GoDaddy requesting take down of Respondent's website. On December 14, 2023, GoDaddy notified Complainant that it had "suspended the website in question".

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.

Notably, Complainant contends that the disputed domain name is identical to Complainant's trademark, that Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

In order to succeed in its claim, Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

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

Paragraph 15(a) of the Rules instructs the Panel to 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

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 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.

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 entirety of Complainant’s THEOREM mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to Complainant’s mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The additional “lp” letters do not avoid this finding.

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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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. Complainant is not affiliated in any way with Respondent, and has never authorized Respondent to register or use the disputed domain name or Complainant’s mark. There is no evidence in the record that Respondent is using the disputed domain name with a bona fide offering of goods or services. Indeed, Respondent’s website appeared to be a fake website displaying stock images and text. There is no evidence in the record that Respondent is commonly known by the disputed domain name or has offered any goods or services in connection with the disputed domain name.

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 Respondent's website at the disputed domain name advertised and displayed stock images and text together with Complainant's mark. The disputed domain name incorporates Complainant's mark in its entirety and resolved to a website that displayed stock images and text, including the following: "THEOREM is an advisory firm [...] We've successfully completed assignments in multiple sectors, technology, financial services, biotechnology, consumer products and manufacturing." The reference to financial services implies a relationship with Complainant's mark, showing Respondent's intent to attract for commercial gain Internet users by creating a likelihood of confusion with Complainant's mark.

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

The Panel finds that 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 <theorempl.co> be transferred to Complainant.

/Lynda J. Zadra-Symes/

Lynda J. Zadra-Symes

Sole Panelist

Date: February 23, 2024