

ADMINISTRATIVE PANEL DECISION

Austin Industries, Inc. v. ken abel
Case No. DCO2025-0044

1. The Parties

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

Respondent is ken abel, United States.

2. The Domain Name and Registrar

The disputed domain name <austin-industries.co> (the “Domain Name”) is registered with NameCheap, Inc. (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 Domain Name. On May 14, 2025, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email to Complainant on May 12, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. 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 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. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 10, 2025.

The Center appointed Robert A. Badgley 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

Complainant describes itself as “one of the nation’s largest, most diversified construction companies with more than 7,000 employee-owners”. Complainant also asserts:

“Complainant has offered industrial and commercial building construction, road construction, general building contractor services, maintenance and repair of commercial, industrial, and manufacturing facilities and buildings, real estate development, construction project management services, and road paving services under the AUSTIN plain word and design mark since at least as early as 1974.”

Complainant holds a registered trademark with the United States Patent and Trademark Office for a stylized letter “A” under reg. No. 4829969, registered on October 13, 2015 in connection with “Industrial and commercial building construction, road construction, general building contractor services, maintenance and repair of commercial, industrial, and manufacturing facilities and buildings, real estate development, construction project management services, and road paving”.

Complainant has owned the domain name <austin-ind.com> since May 18, 1996, and uses that domain name to host a commercial website. This website features Complainant’s stylized “A” registered trademark incorporated into its mark AUSTIN INDUSTRIES. Complainant’s website advertises Complainant’s offerings and contains links to various media articles discussing Complainant and its various activities.

The Domain Name was registered on April 30, 2025. The Domain Name does not resolve to an active website. According to Complainant, however, and as corroborated by documents annexed to the Complaint, Respondent has set up email addresses using the Domain Name. At least one email was sent to a vendor of Complainant, and this email included Complainant’s logo and trademark, as well as Complainant’s physical address, and asked the vendor to fill out a Request For Quote form and return it to the sender’s email address. Specifically, Complainant alleges:

“Respondent has been using the Domain in bad faith to spoof legitimate email addresses from the @austin-ind.com domain and impersonate Austin’s employees to Austin’s vendors, presumably in an attempt to fraudulently redirect funds and/or materials and parts. [...] Specifically, at least one of Austin’s vendors received fraudulent emails from the email address [redacted]@austin-industries.co requesting a quote for parts and materials and attaching an RFQ listing the email address as contact information.”

Respondent has not denied any of the foregoing allegations.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

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 Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Panel finds that Complainant has rights in the unregistered mark AUSTIN INDUSTRIES through use demonstrated in the record, as Respondent has targeted Complainant by using the Domain Name to send fraudulent emails and invoices purporting to be originated from Complainant. [WIPO Overview 3.0](#), section 1.3. The Panel also finds that the Domain Name is confusingly similar to that mark. The Domain Name inserts a hyphen between the words AUSTIN and INDUSTRIES. This de minimis difference does not alter the fact that the AUSTIN INDUSTRIES mark is clearly recognizable within the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Respondent has not come forward in this proceeding to articulate his bona fide vis-à-vis the Domain Name, or to dispute Complainant's plausible allegations and credible evidence. On the undisputed record here, the Panel finds it clear that Respondent was aware of Complainant's AUSTIN INDUSTRIES mark when registering the Domain Name. On the same day as Respondent acquired the Domain Name, he prepared a phony email, which incorporated Complainant's logo and trademark and indicated Complainant's physical address, and sent that email to one of Complainant's vendors in an apparent attempt to perpetrate a fraud on that vendor. Such conduct obviously does not invest Respondent with a legitimate interest in the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation”, are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the “Rights or Legitimate Interests” section. On this undisputed record, the Panel finds that Respondent targeted Complainant’s mark when registering the Domain Name, and used the Domain Name to impersonate Complainant and carry out a fraudulent scheme at the expense of at least one of Complainant’s vendors. This constitutes bad faith registration and use within the meaning of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Name <austin-industries.co> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: June 29, 2025