

ADMINISTRATIVE PANEL DECISION

Marlink SAS v. Privacy Service Provided by Withheld for Privacy ehf / Arya Mokani

Case No. DIO2022-0037

1. The Parties

The Complainant is Marlink SAS, France, represented by Inlex IP Expertise, France.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Arya Mokani, United Arab Emirates.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 12, 2022. On August 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 12, 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 the Complainant on August 19, 2022, 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 amended Complaint on August 23, 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 the Respondent of the Complaint, and the proceedings commenced on August 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 14, 2022.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on October 3, 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

The Complainant is a French company specializing in providing telecommunications services. It is particularly involved in cybersecurity in the maritime industry. This can be seen from its website at “www.marlink.com”. It operates internationally with related companies including Marlink SA in Belgium, Marlink Inc. in the United States of America (“United States”), and Marlink AS in the Netherlands.

Used in the course of its activities are a number of trade marks for the mark SKYFILE. Copies of the trade mark registrations are provided with the Complaint. All of the marks relied upon predate the date of registration of the disputed domain name on May 24, 2022.

The Complainant in its Complaint refers specifically to the following marks:

French trade mark SKYFILE No. 3147842 registered on February 14, 2002, for *inter alia* telecommunications services;

Canadian trade mark SKYFILE No. 1131757 registered on February 16, 2005, for *inter alia* telecommunications services;

United States trade mark SKYFILE No. 2930461 registered on May 8, 2005, for *inter alia* telecommunications services;

Philippines trade mark SKYFILE No. 4/2002/2155 registered on December 19, 2005, for *inter alia* telecommunications services;

International Trade mark SKYFILE No. 796142 registered on June 18, 2002, for *inter alia* telecommunications services covering Austria, Australia, Benelux, China, Germany, Denmark, Spain, Finland, United Kingdom, Greece, Ireland, Italy, Japan, Norway, Portugal, Sweden, Singapore and Türkiye;

Hong Kong trade mark No. 301496205 registered on December 10, 2009, for *inter alia* telecommunications services.

The Complainant is also the owner of the domain name <skyfile.com> registered on July 20, 1998. It redirects to the webpage dedicated to SKYFILE products and services on the Complainant’s official website. The Complainant provided a copy of a Whois search of the domain name <skyfile.com>.

In the absence of a Response the Panel finds the above facts as set out in the complaint to be true.

The disputed domain name was registered on May 24, 2022. It resolves to a website, referring to “ufile” cloud storage, and bearing a “skyfiles” (in the plural) logo, to download and/or transfer files.

5. Parties’ Contentions

A. Complainant

The Complainant submits:

- i. The disputed domain name is identical to the Complainant’s trade mark SKYFILE;

- ii. There is no evidence that the Respondent has any rights or legitimate interests in the disputed domain name. In particular, there is no business or legal relationship between the Complainant and the Respondent;
- iii. The Complainant relies upon the evidence of a website operated by the Respondent which leads consumers to believe, contrary to the fact, that it is a site affiliated with the Complainant. The Respondent knew or should have known of the Complainant's trade mark rights but nevertheless used a domain name incorporating the Complainant's trade mark in which it had no rights or legitimate interests.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant submits that the disputed domain name is identical to the Complainant's trade mark SKYFILE. That is correct if the generic Top-Level Domain ("gTLD") ".io" is not taken into account. There is no difference in spelling between the trade mark SKYFILE and the disputed domain name.

The Complainant suggests that ".io" is an alternative gTLD to ".com" which is not relevant in determining whether the disputed domain name is identical or confusingly similar to the Complainant's trade mark. In support of that submission the Complainant relies upon the earlier panel decision in *LinkedIn Corporation v DNS Admin, Botflip LLC*, WIPO Case No. [DIO2022-0005](#) which reached that view in respect of ".io". This Panel agrees with that finding which is also in accordance with section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Accordingly this Panel finds that the disputed domain name is confusingly similar to the trade mark SKYFILE in which the Complainant has rights within paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant points out:

- i. There is no business or legal relationship between the Complainant and the Respondent;
- ii. The Complainant has neither authorized nor licensed the Respondent to use the trade mark SKYFILE in any way;
- iii. There is no evidence that the Respondent has filed or registered the trade mark SKYFILE which could evidence a legitimate interest.

The Complainant also points out that a Google search for SKYFILE provides prominently the Complainant's mark and domain name. However the disputed domain name points to a website to download and transfer files (as can be seen from the photograph in the Complaint) which may lead a consumer to believe that it is a site affiliated with the Complainant – while directing to a website referring to a "ufile" cloud storage, and bearing a "skyfiles" (in the plural) logo – which would seem to be that of a competitor. This also reflects the absence of any rights or legitimate interests of the Respondent.

Further, the Complainant provided an email dated July 25, 2022, sent by the Complainant's lawyers to the Respondent seeking confirmation that the disputed domain name will not be used in a way that could create confusion with the Complainant's activities. No response was ever received which the Complainant submits supports a finding of lack of rights or legitimate interests.

Section 2.1 of [WIPO Overview 3.0](#) makes it clear that when a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second UDRP element.

In this Panel's view that is the position in this Complaint. The Complainant, based on the evidence as set out above, has made out a *prima facie* case that the Respondent lacks rights or legitimate interests. In the absence of a Response the Respondent has failed to produce contrary evidence. In those circumstances the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a)(ii) of the Policy.

C. Registered or Used in Bad Faith

The Complainant relies upon evidence that both its trading and corporate name MARLINK and its trade mark SKYFILE are well known marks. In the case of MARLINK this was established in an earlier decision *Marlink SA v Contact Privacy Inc.*, WIPO Case No. [D2019-1653](#). In the case of SKYFILE an Internet search on SKYFILE shows more than 150,000 results and that the top search results resolve to the Complainant's website and websites owned by SKYFILE solutions retailers. This is evidenced by a screenshot reproduced in the Complaint. It follows, according to the Complainant that the SKYFILE trade mark has a reputation in the satellite communication field of activity.

The Complainant submits therefore that the only reason for the Respondent to have registered the disputed domain name was to cause confusion in the public's mind – as stated above by directing to a competing website.

The Complainant also adduces evidence, exhibited by way of a screenshot reproduced in the Complaint, to the effect that email servers have been activated so that emails with addresses using the disputed domain name can be sent and received.

In the Panel's view and in the absence of a Response the Complainant has adduced sufficient evidence to support a finding falling within section 3.2.2 of [WIPO Overview 3.0](#) that the Respondent has registered the disputed domain name in circumstances where he "knew or should have known" of the Complainant's trade mark rights, that he had no rights or legitimate interests in the mark and that its registration would result in a domain name identical to the Complainant's mark. This is sufficient to establish registration in bad faith.

The Panel also takes into account the Complainant's submission that on the evidence the Respondent employed a privacy service in order to hide its identity and to avoid being notified of a UDRP proceeding. It is established (see section 3.6 of [WIPO Overview 3.0](#)) that this may constitute an inference of bad faith in the circumstances, as in this case, where there is no evidence to support a legitimate use of the privacy service and when the Respondent has failed to refute such an inference.

It follows and the Panel therefore finds that the disputed domain name was registered in bad faith.

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, <skyfile.io>, be transferred to the Complainant.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: October 17, 2022