

ADMINISTRATIVE PANEL DECISION

Adobe Inc. v. Sokolov Andrey
Case No. DIO2023-0029

1. The Parties

The Complainant is Adobe Inc., United States of America ("United States"), represented Perkins Coie, LLP, United States.

The Respondent is Sokolov Andrey, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <hubblestack.io> is registered with Sav.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 3, 2023. On August 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 4, 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 and contact information in the Complaint (Redacted for Privacy). The Center sent an email communication to the Complainant on August 11, 2023 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 11, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the "Policy"), the Rules for .IO Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .IO 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 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 13, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on September 19, 2023. 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 United States company which is known as one of the leading software companies worldwide.

In 2016, the Complainant began developing an open-source security compliance project written in the Python computer programming language, called HUBBLESTACK, which was promoted via the website at the disputed domain name <hubblestack.io>. Indeed, the disputed domain name was originally registered in February 2016 in the name of a former Complainant's employee who acquired it on behalf of the Complainant and let it unintentionally expire in February 2023.

The disputed domain name <hubblestack.io> was registered by the Respondent on April 30, 2023 and is currently pointing to a website that reproduces the content and layout of the Complainant's prior website at <hubblestack.io>, including references to the Complainant's sponsorship of the HUBBLESTACK project, but displays also a link "online casino" which redirects to another website promoting online casino and gambling services.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that it has common law rights in HUBBLESTACK as it has been using the name and trademark HUBBLESTACK in commerce since April 25, 2016 when it launched the original publicly-available HUBBLESTACK website at the disputed domain name, which a former employee acquired on the Complainant's behalf in February 2016.

The Complainant thus submits that the disputed domain name is identical to its HUBBLESTACK mark.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent was in no way authorized or licensed by the Complainant to use the HUBBLESTACK mark.

The Complainant emphasizes that the Respondent is not commonly known by the disputed domain name and is not making a *bona fide* offering of goods or services or a legitimate or fair use of the disputed domain name, since the Respondent has registered the disputed domain name to deceive and mislead people into visiting the Respondent's website where the Respondent is imitating the former HUBBLESTACK website and is promoting online gambling services for his own commercial gain.

With reference to the circumstances evidencing bad faith, the Complainant indicates that, given the registration of the disputed domain name occurred shortly after it was (inadvertently) relinquished after many years of use by the Complainant, and considering the Respondent is replicating the prior website created by the Complainant with the mere addition of a link to online gambling sites, it is wholly implausible that the Respondent independently and coincidentally registered the disputed domain name and began using it in this manner. The Complainant highlights that the Respondent's website continues to expressly refer to the Complainant and its services and is also redirecting to other resources relating to the Complainant's HUBBLESTACK offering, thus showing that the Respondent intentionally registered the disputed domain name in bad faith opportunistically to improperly exploit the value of the HUBBLESTACK mark for the Respondent's own commercial gain.

The Complainant also submits that the Respondent has engaged in a pattern of bad faith registration and use of domain names since the Respondent also owns the domain name <litebluee.us>, which redirects to a website imitating an official United States Postal Service (USPS) website, through which the Respondent

appears to be engaging in phishing and on which the Respondent is also linking to online gambling sites. The Complainant states that the Respondent also appears to be engaging in similar activity through various other domain names and associated websites, including <massfarmbureau.com> and <southbank.su>.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Procedural Considerations

Under paragraph 10 of the Rules, the Panel needs to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case, and that the administrative proceeding takes place with due expedition.

The Panel notes that, according to the Whois records, the Respondent is based in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification. Therefore, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel is of the view that it should. It appears that the notification of the Complaint sent by email was successfully delivered to the Respondent at his email address as disclosed by the Registrar.

The Panel notes that the Respondent, who registered the disputed domain name only in April 2023, appears to be capable of controlling the disputed domain name and its content and that, having apparently received notification of the Complaint by email, he would have been able to formulate and file a Response in the administrative proceeding in case he wished to do so.

Moreover, for reasons detailed below, the Panel has no doubts (albeit in the absence of a Response) that the Respondent registered and has used the disputed domain name in bad faith.

The Panel concludes that the Parties have been given a fair opportunity to present their case and, in order to ensure that the administrative proceeding takes place with due expedition, will now proceed to a Decision.

6.2. Substantive Issues

According to 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." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered or 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 the 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 1.7.¹

Based on the available record, the Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

As stated in section 3.1 of the [WIPO Overview 3.0](#), "To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. [...] Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning."

The Complainant in this case has submitted historical screenshots of the website at the disputed domain name dated February 25, 2021, showing that the disputed domain name was used to promote the Complainant's open-source security compliance project written in the Python computer programming language under the trademark HUBBLESTACK. The Complainant also provided an excerpt from a Complainant's blog dated February 24, 2021 dedicated to the Complainant's HUBBLESTACK project, mentioning that it had grown at an incredible pace at the Complainant, that HUBBLESTACK was deployed to almost every server across the Complainant and inviting users to help contribute to the development of the project as it was open sourced and could be joined on the GitHub.com platform (GitHub). The Complainant further submitted copy of the Complainant's GitHub webpage dedicated to the HUBBLESTACK project, showing posts related to HUBBLESTACK dated from March 2017 onwards.

The Panel has reviewed the documents submitted by the Complainant and finds that, also in light of the duration of use of the mark, they are sufficient to establish common law rights on HUBBLESTACK for the purpose of standing in this proceeding.

The Panel finds the entirety of the mark is reproduced within the disputed domain name, with the mere addition of the country-code Top Level Domain (ccTLD) ".io", which can be disregarded being a standard registration requirement. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.11.1.

Therefore, based on the available record, 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 a respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is 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. 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.

¹ In view of the similarities between the Uniform Domain Name Dispute Resolution Policy (UDRP) and the .IO Policy, the Panel will refer to the [WIPO Overview 3.0](#) when relevant.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademark. Moreover, there is no element from which the Panel could infer a Respondent's rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

As highlighted above, the disputed domain name has been pointed to website reproducing contents that were displayed on the website at the disputed domain name at the time it was operated by the Complainant, with the sole addition of a link to a website promoting casino and gambling services. The Panel finds that the Respondents' use does not amount to a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the disputed domain names without intention to misleadingly divert the consumers or to tarnish the Complainant's trademark.

Moreover, the Respondent has been clearly impersonating the Complainant by publishing the following disclaimer on his website: "HubbleStack is a free and open-source project made possible by Adobe". Panels have categorically held that the use of a domain name for illegal activity, including impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the disputed domain name, being identical to the Complainant's trademark HUBBLESTACK, is inherently misleading. UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered or Used 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, in light of the prior use of the disputed domain name by the Complainant to promote its HUBBLESTACK open-source security compliance project and considering the Respondent registered the disputed domain name few weeks after it was left expired by the Complainant's former employee, the Respondent was or could have been aware of the Complainant and its project at the time of registration.

Moreover, considering he has pointed the disputed domain name to a website reproducing contents taken from the Complainant's prior website at the disputed domain name, the Panel finds that the Respondent clearly intended to target the Complainant and its HUBBLESTACK project.

In view of the Respondent's redirection of the disputed domain name to the website described above, displaying contents originally published by the Complainant under the disputed domain name with the addition of a link to a website promoting online casino and gambling services, the Panel finds that the Respondent has intentionally attempted to attract internet users to his website for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website according to paragraph 4(b)(iv) of the Policy.

Therefore, based on the available record, the Panel finds the third element of the Policy has been established.

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 <hubblestack.io> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: October 3, 2023