

ADMINISTRATIVE PANEL DECISION

Smartmockups s.r.o. v. Registration Private, Domains By Proxy, LLC /
Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2022-1868

1. The Parties

The Complainant is Smartmockups s.r.o., Czech Republic, represented by SafeNames Ltd., United Kingdom.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America / Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Names and Registrars

The disputed domain names <smarmockups.com> and, <smartmokups.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2022. On May 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <smartmokups.com>. On May 25, 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 May 27, 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 and requested a second domain name to be added to the proceedings on May 30, 2022. On May 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <smarmockups.com>. On June 2, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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 June 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 29, 2022.

The Center appointed William Lobelson as the sole panelist in this matter on July 1, 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, Smartmockups s.r.o., is a leading online graphic design platform founded in 2016. It operates on a worldwide scope and benefits from a wide degree of awareness among Internet and social media users.

The Complainant owns and uses the domain name <smartmockups.com> as well as various trademark registrations formed with SMARTMOCKUPS:

- Mexico Reg. 2189106 (device) of December 15, 2020;
- Australia Reg. 2123578 (device) of September 25, 2020;
- European Union Intellectual Property Office ("EUIPO")
Trade Mark no. 018313309 (device) of February 27, 2021;
- EUIPO Trade Mark no. 018313306 of March 17, 2022.

The disputed domain names are <smartmokups.com> and <smarmockups.com>, respectively registered on February 9, 2021, and June 9, 2021. According to the Complaint, the disputed domain names have been used in connection with a parking page with Pay-Per-Click (PPC) links.

The Complainant served a cease and desist letter to the Respondent on December 8, 2021, to which the Respondent did not reply.

The Complainant filed the present Complaint on May 23, 2022, and found, after being revealed the identity of the Respondent, that both parties had already been involved in a domain name dispute, pertaining to the domain name <smatmockups.com>.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain names are confusingly similar to its earlier trademarks, that the Respondent has no rights or legitimate interests in the disputed domain names, and that the disputed domain names were registered and are being used in bad faith. The Complainant requests the transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(a)(i));
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(a)(ii)); and
- (iii) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

A. Identical or Confusingly Similar

The Complainant is the owner of a number of SMARTMOCKUPS formative trademarks, all registered and used before the date when the disputed domain names were registered.

The disputed domain names are <smarmockups.com> and, <smartmokups.com>, that both imitate the Complainant's trademark SMARTMOCKUPS.

The disputed domain names only differ from the Complainant's SMARTMOCKUPS mark by one letter; the removal of the letter "c" for <smartmokups.com> and the letter "t" for <smarmockups.com>.

As stated under section 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element".

Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".com" does not prevent a finding of confusing similarity.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP paragraph 4(c) include the following:

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

The Panel notes that the Respondent has not filed a response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain names, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain names.

The Complainant further contends that the Respondent is not commonly known under the disputed domain names, and does not own any proprietary rights in the names "smarmockups" or "smartmokups".

Besides, the Exhibits filed together with the Complaint reflect that the disputed domain names were parked on a Pay-Per-Click page and were offered for sale, thus supporting the Complainant's contention that the Respondent does not make any *bona fide* use – neither commercial nor noncommercial, of the disputed domain names.

The Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain names.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant has substantiated that its trademark SMARTMOCKUPS benefits from a high level of public's awareness, and that the Respondent has registered disputed domain names that are confusingly similar to its trademark by using the fraudulent technique of "typosquatting".

It is also shown by the Complainant that the Respondent is engaged into a pattern of conduct, registering numerous domain names identical or similar to well-known trademarks, and has been involved already in a number of UDRP procedures that were ruled against the Respondent.

Besides, the Complainant served a cease and desist letter to the Respondent before filing the present Complaint, and thus notified its trademark rights to the Respondent.

The Respondent did not respond and did not cancel nor grant back the disputed domain names, thus maintaining a use parking page with PPC links. The Respondent has intentionally attempted to attract and divert Internet users, for commercial gain, through its use of PPC links to various competing and unrelated sites and services.

Finally, the Complainant has reported an earlier UDRP decision pertaining to the domain name <smatmockups.com>, that was ruled against the same Respondent (*Smartmockups s.r.o. v. Registration Private, Domains By Proxy, LLC/ Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-2513](#)), on the ground that the domain name was confusingly similar with the Complainant's mark (typosquatting), that the Respondent had no legitimate interest and had registered and used the said domain name in bad faith.

It therefore cannot make any doubt that the Respondent had the Complainant's trademark in mind when it registered the disputed domain names, and engaged into a fraudulent pattern of conducting by trying, again, to divert to its own profit the notoriousness of the Complainant's trademark.

Accordingly, the disputed domain names were registered and are being used in bad faith, therefore, the Complainant has satisfied paragraph 4(a)(iii) 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 names, <smarmockups.com> and, <smartmokups.com>, be transferred to the Complainant.

/William Lobelson/

William Lobelson

Sole Panelist

Date: July 7, 2022