

ADMINISTRATIVE PANEL DECISION

Peak Technical Services, Inc. v. Terrence Mariani Case No. D2022-4042

1. The Parties

Complainant is Peak Technical Services, Inc., United States of America (“United States” or “U.S.”), represented by The Webb Law Firm, United States.

Respondent is Terrence Mariani, United States.

2. The Domain Name and Registrar

The disputed domain name <peakstaffingusa.com> (the “Domain Name”) is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 29, 2022, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to Complainant on October 31, 2022 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 November 3, 2022.

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 November 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 25, 2022.

The Center appointed John C. McElwaine as the sole panelist in this matter on December 2, 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

Complainant provides technical recruiting and staffing solutions for their clients. Relevant to this matter, Complainant owns the following trademark registrations in the United States:

- PEAK TECHNICAL STAFFING USA, U.S. Reg. No. 3973161, registered “personnel placement and consulting services” in Class 35;
- PEAK TECHNICAL SERVICES, INC., U.S. Reg. No. 1846931, registered for “personnel placement and consulting services”, in Class 35; and
- PEAK and Design, U.S. Reg. No. 1844668, registered “personnel placement and consulting services.”

The Domain Name was registered on October 3, 2022. At the time of filing the Complaint, the Domain Name did not resolve to an active website.

5. Parties' Contentions

A. Complainant

As background, Complainant asserts that it is an engineering and technical staffing agency, and has expertise in placing engineering, engineering support, and information technology (IT) professionals with employers throughout the United States. Complainant provided evidence that it uses the PEAK Technical Staffing USA trademark and has registered this mark, as well as, PEAK TECHNICAL SERVICES, INC., and PEAK. Collectively, these unregistered and registered trademark rights are referred to herein as the PEAK TECHNICAL STAFFING Marks.

Complainant alleges that Respondent is using the Domain Name to send emails where the sender is impersonating an executive of Complainant and is soliciting payments from unsuspecting and confused individuals. In particular, Complainant provided evidence of an email allegedly from an employee of the Complainant, using the email address [redacted]@peakstaffingusa.com to send a fraudulent check to an unsuspecting consumer with instructions on how to make a mobile deposit of the fraudulent check. In another example, the Domain Name was used to send a job offer letter with Complainant's letterhead.

With respect to the first element of the Policy, Complainant contends that the Domain Name incorporates most of Complainant's registered PEAK TECHNICAL STAFFING USA mark as the dominant portion, omitting the word, “technical”, from the Domain Name. Complainant alleges that this difference is inconsequential because “PEAK” is the dominant portion of Complainant's PEAK TECHNICAL STAFFING Marks.

With respect to the second element of the Policy, Complainant alleges that Respondent is not making any *bona fide* use of the Domain Name. Instead, Complainant asserts that the Domain Name is being used to facilitate email communications to attempt to obtain payments through impersonation of Complainant's employees.

With respect to the third element of the Policy, Complainant asserts that Respondent had actual knowledge or constructive knowledge of Complainant's PEAK TECHNICAL STAFFING Marks when it registered the Domain Name in order to disrupt the business of Complainant. Complainant asserts that the evidence of emails where Respondent is claiming to be employees of Complainant establish this factor. Similarly, Complainant asserts that Respondent is using Domain Name in bad faith by sending emails impersonating employees of Complainant and soliciting payments from confused consumers.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

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

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel's findings on each of the above cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant show that the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2. On this point, Complainant has provided sufficient evidence that Complainant is the owner of existing trademark rights in the PEAK TECHNICAL STAFFING Marks.

While each case is judged on its own merits, in cases where a domain name incorporates at least a dominant feature of the relevant mark recognizable in the domain name, then the disputed domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See [WIPO Overview 3.0](#), section 1.7. Here, the PEAK TECHNICAL STAFFING USA trademark is clearly identifiable in the Domain Name, including the dominant PEAK element and inclusion of the words "staffing" and "usa". The deletion of the descriptive term "technical" does not prevent a finding of confusing similarity under the first element.

Accordingly, the Panel finds that the Domain Name is confusingly similar to Complainant's PEAK TECHNICAL STAFFING Marks in which Complainant possesses valid trademark rights under the UDRP. Therefore, Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy, paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant needs to only make a *prima facie* showing on this element, at which point the burden of production shifts to Respondent to present evidence that it has rights or legitimate interests in the Domain Name. If Respondent has failed to do so, Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by*

Proxy, Inc. / Eklin Bot Systems, Inc., WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

Complainant contends there is no right or legitimate interests in registering and using a domain name for the purpose of trading upon Complainant's trademarks and perpetrating a fraudulent scheme to obtain payments and mislead job seekers. Respondent has not denied any of Complainant's assertions and has not put forth any evidence showing that it has a right or legitimate interest in the Domain Name. The Panel observes that evidence was provided showing the Domain Name has been used to send several emails in an attempt to pose as a representative of Complainant for fraudulent purposes.

The Panel finds that the purpose of registering the Domain Name was to engage in an email scam or a phishing scheme, none of which is a *bona fide* offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 ("Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent."); see also, *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name, "such phishing scam cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name".) The undisputed evidence of impersonation, deception and fraud nullifies any possible basis for the acquisition of rights or legitimate interests by Respondent. See *Afton Chemical Corporation v. Meche Kings*, WIPO Case No. [D2019-1082](#).

Accordingly, Complainant has made a *prima facie* showing of Respondent's lack of any rights or legitimate interests and Respondent has failed to come forward to rebut that showing. As provided for by paragraph 14 of the Rules, the Panel may draw such inference from Respondent's default as it considers appropriate.

The Panel finds that Respondent does not have rights or legitimate interests in the Domain Name and that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Here, the evidence shows that Respondent registered the Domain Name to perpetrate at least two fraudulent schemes. Complainant's the PEAK TECHNICAL STAFFING USA Marks were intentionally chosen when the Domain Name was registered with the intent to impersonate Complainant for the purpose of misleading Complainant's clients. This fact is established by the use of Complainant's trademark and logo in the emails as well as in the checks and letters that were allegedly created by Respondent. In light of the evidence demonstrating the fraudulent use of the Domain Name, there could be no other legitimate explanation except that Respondent intentionally registered the Domain Name to cloak its actions and deceive recipients into believing the emails were from Complainant. The Domain Name does not appear to have been registered for any other purpose as the Domain Name does not resolve to an active website. Such activity constitutes a disruption of Complainants' business and also establishes bad faith registration and use. *Securitas AB v. Whois Privacy Protection Service, Inc. / A. H.*, WIPO Case No. [D2013-0117](#) (finding bad faith based upon the similarity of the disputed domain name and the complainant's mark, the fact that the complainant is a well-known global security company and the fact that the disputed domain name is being used to perpetrate an email scam.)

The use of the Domain Name to conduct fraud constitutes a disruption of Complainants' business and also establishes bad faith registration and use pursuant to paragraph 4(b)(iii) of the Policy. *Securitas AB v. Whois Privacy Protection Service, Inc. / A. H.*, WIPO Case No. [D2013-0117](#) (Finding bad faith based upon the similarity of the disputed domain name and the complainant's mark, the fact that the complainant is a well-

known global security company and the fact that the disputed domain name is being used to perpetrate an email scam.) As discussed above, Respondent used Complainant's name when communicating with third parties with the fraudulent purpose of misleading third parties. In light of the actions undertaken by Respondent, it is inconceivable that Respondent coincidentally selected the Domain Name without any knowledge of Complainant. See e.g., *Arkema France v. Steve Co., Stave Co Ltd.*, WIPO Case No. [D2017-1632](#).

Moreover, it does not matter that a website was not resolving from the Domain Name. In finding, a disputed domain name used only for an email scam was bad faith, the panel in *Kramer Law Firm, P.A. Attorneys and Counselors at Law v. BOA Online, Mark Heuvel*, WIPO Case No. [D2016-0387](#), pointed out that numerous UDRP panels have found such impersonation to constitute bad faith, even if the relevant domain names are used only for email communications. See, e.g., *Terex Corporation v. Williams Sid, Partners Associate*, WIPO Case No. [D2014-1742](#) ("Respondent was using the disputed domain name in conjunction with...an email address for sending scam invitations of employment with Complainant"); and *Olayan Investments Company v. Anthono Maka, Alahaji, Koko, Direct investment future company, ofer bahar*, WIPO Case No. [D2011-0128](#) ("although the disputed domain names have not been used in connection with active websites, they have been used in email addresses to send scam emails and to solicit a reply to an 'online location'").

For the reasons set forth above, the Panel holds that Complainant has met its burden under paragraph 4(a)(ii) of the Policy and has established that Respondent registered and is using or used the Domain Name 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 Domain Name, <peakstaffingusa.com>, be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: December 16, 2022