

ADMINISTRATIVE PANEL DECISION

Simon-Kucher & Partners Strategy & Marketing Consultants GmbH v. Netherlands

Case No. D2023-0730

1. The Parties

The Complainant is Simon-Kucher & Partners Strategy & Marketing Consultants GmbH, Germany, represented by SKW Schwarz Rechtsanwälte Steuerberater Wirtschaftsprüfer Partnerschaft mbB, Germany.

The Respondent is Netherlands, Netherlands.

2. The Domain Name and Registrar

The disputed domain name <simon-kuchers.com> (the “Disputed Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 17, 2023. On February 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 20, 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 (Domains By Proxy, LLC, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 22, 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 February 22, 2023.

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 February 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 22, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on March 24, 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, Simon-Kucher & Partners Strategy & Marketing Consultants GmbH, is a global consultancy firm with over 2,000 employees in more than 30 countries.

The Complainant is the owner of the following trademarks:

- SIMON-KUCHER & PARTNERS, International word mark registered under No. 992355 on November 27, 2008 in classes 35, 36, and 41, with designated protection in the European Union where the Respondent appears to be located; and
- the German figurative mark depicted below, registered under No. 302022108536 on June 9, 2022 in classes 9, 35, and 42.



The Complainant also owns the domain name <simon-kucher.com> which resolves to its official website.

The Respondent registered the Disputed Domain Name on January 9, 2023. The Disputed Domain Name appears to be inactive.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to a trademark in which it claims to have rights. The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent is unknown to the Complainant and has apparently used a fake name when registering the Disputed Domain Name. The Complainant claims that it has not licensed the use of its intellectual property rights to use and operate the Disputed Domain Name. Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent unfairly intercepts customers by registering a domain name that derives from the Complainant's above-mentioned signs with only a minor but common error (so-called "typosquatting") to exploit typical "typos" made by Internet users. In the Complainant's view, the fact that the Disputed Domain Name has not been used so far does not change the fact that the registration has been made in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements

and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

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

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's SIMON-KUCHER & PARTNERS and figurative SIMON-KUCHER trademarks have been registered and used in connection to its consultancy business.

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. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Disputed Domain Name incorporates the distinctive textual part of the Complainant's trademarks (SIMON-KUCHER) in its entirety, simply adding the letter "s" at the end. In the Panel's view, this small addition does not prevent the Complainant's marks to be easily recognizable within the Disputed Domain Name.

Additionally, it is well-established that the generic Top-Level Domain ("gTLD"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's trademarks.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make out a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “Neth erlands”, which corresponds to the name of the country where the Respondent is located except for the addition of a space. In the Panel’s view, this suggests that the Respondent used false contact details, which is further strengthened by the fact that, according to the case file, no email could be delivered to the email address provided by the Respondent. The Respondent’s use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). In addition to the situation mentioned above, the Panel finds that subtle misspellings of or small additions to a complainant’s mark in a domain name can also impersonate the complainant, as there is a risk that Internet users will not notice the difference with the complainant’s mark. In the present case, the Disputed Domain Name incorporates the distinctive textual part of the Complainant’s trademarks (SIMON-KUCHER) in its entirety, simply adding the letter “s” at the end. In addition, the Panel observes that the Disputed Domain Name is nearly identical to the Complainant’s domain name <simon-kucher.com> which resolves to its official website. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

In this case, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, the Respondent does not appear to make any use of the Disputed Domain Name. The passive holding or non-use of a domain name is, in appropriate circumstances, evidence of a lack of rights or legitimate interests in the domain name (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#)).

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

In the present case, the Panel finds it more likely than not that the Respondent was aware of the Complainant and its trademark rights when it registered the Disputed Domain Name. As mentioned above, the Disputed Domain Name incorporates the distinctive textual part of the Complainant’s trademarks and company name (“Simon-Kucher”) in its entirety, with the sole addition of the letter “s” at the end. Moreover, the Disputed Domain Name is nearly identical to the Complainant’s domain name <simon-kucher.com> which resolves to its official website. In the Panel’s view, the Respondent’s awareness of the Complainant’s

trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

The Panel observes that the Respondent is not presently using the Disputed Domain Name. While UDRP panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put (see section 3.3 of [WIPO Overview 3.0](#)).

In the present case, the Panel is of the opinion that all above factors apply in this case:

- the Panel finds that the "SIMON-KUCHER" part of the Complainant's trademarks and company name is distinctive;
- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use;
- there are indications that the Respondent concealed its identity by using false contact details; and
- given the confusing similarity with the Complainant's company name, registered trademarks, and main domain name, the Panel finds it difficult to conceive any plausible legitimate future use of the Disputed Domain Name by the Respondent.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element 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 Name <simon-kuchers.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: April 6, 2023