

ADMINISTRATIVE PANEL DECISION

TPS Parking Management, LLC v. Paul Shirley
Case No. D2022-4988

1. The Parties

The Complainant is TPS Parking Management, LLC, United States of America (“U.S.”), represented by Neal, Gerber & Eisenberg, U.S.

The Respondent is Paul Shirley, U.S.

2. The Domain Names and Registrar

The disputed domain names <parkingspotcoupon.com>, <theparkingspotaaadiscout.com>, <theparkingspotatbwi.com>, <theparkingspotatdfw.com>, <theparkingspotcouponcode.com><theparkingspotdia.com>, <theparkingspothobby.com>, <theparkingspotlovefield.com>, <theparkingspotpromocode.com>, <thespotiahparking.com>, <thespotlaxparking.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 26, 2022. On December 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on December 29, 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 January 3, 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 January 6, 2023. In accordance with the Rules,

paragraph 5, the due date for Response was January 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 30, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on February 1, 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 in the business of providing vehicle parking lot and shuttle services. The United States Patent and Trademark Office ("USPTO") issued a registration for the THEPARKINGSPOT mark on the Supplemental Register on May 16, 2000 (Reg. No. 2,351,007). On June 28, 2005, because the mark had acquired distinctiveness through use in commerce going back as far as 1998, the USPTO issued a registration for the mark on the Principal Register (Reg. No. 2,963,762).

The Complainant owns other registrations for marks used in its business, including U.S. Reg. No. 4,991,048 for the mark SPOT (and Design), registered on July 5, 2016. This registration is on the Principal Register, and no disclaimer of the word "spot" appears in the registration. The Complainant has submitted evidence of its efforts to market and promote its services under the THEPARKINGSPOT and SPOT marks via various means, including billboards, other signage, and in connection with athletic competitions.

The Complainant also promotes its marks and services through the domain name <theparkingspot.com> and numerous additional domain names, including <theparkingspotairportparking.com> and <parkingspotairport.com>.

According to the Whois information, all of the domain names were registered on August 25, 2022, except for <theparkingspotpromocode.com> and <parkingspotcoupon.com> which were registered the day prior. The disputed domain names have been used to redirect Internet users to websites with pay-per-click links featuring services competitive to the Complainant. The Respondent did not reply to cease and desist communications the Complainant sent concerning the disputed domain names.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain names; and that the disputed domain names were registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names, and (iii) the disputed domain names have been registered and are being used in bad faith. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain names are identical or confusingly similar to that mark. This element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.7.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the marks THEPARKINGSPOT and SPOT (and Design) by providing evidence of trademark registrations for those marks.

In examining whether the disputed domain names are confusingly similar to the Complainant's marks, the Panel finds it helpful to divide the disputed domain names into three categories.

The first category is comprised of the disputed domain names <theparkingspotpromocode.com>, <theparkingspotlovefield.com>, <theparkingspotaaadiscout.com>, <theparkingspotatbwi.com>, <theparkingspotatdfw.com>, <theparkingspotcouponcode.com>, <theparkingspotdia.com>, and <theparkingspohobby.com>. These disputed domain names incorporate the THEPARKING SPOT mark in its entirety. This is sufficient for showing confusing similarity under the Policy.

The second category is comprised of the disputed domain names <thespotiahparking.com> and <thespotlaxparking.com>. These disputed domain names are confusingly similar to the Complainant's marks. They each incorporate the literal element of the SPOT (and Design) mark in their entirety, which tends toward a showing of confusing similarity. They likewise are confusingly similar to the Complainant's THEPARKINGSPOT mark because they both contain all of the words found within that mark, albeit in a different order.

The disputed domain name <parkingspotcoupon.com> is confusingly similar to the SPOT mark because it incorporates the mark in its entirety. Confusing similarity is also shown from how the disputed domain name incorporates two of the three words found within the THEPARKINGSPOT mark, namely, “parking” and “spot”.

The presence of other words and terms in the disputed domain names, such as “promo code”, “aaa”, “discount”, and “hobby” does not prevent a finding of confusing similarity between the disputed domain names and the Complainant's marks. See [WIPO Overview 3.0](#), section 1.8. The THEPARKINGSPOT and SPOT marks remain sufficiently recognizable for a showing of confusing similarity under the Policy.

The Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

The Complainant will succeed under this element if it makes a *prima facie* showing that the Respondent lacks rights or legitimate interests in the disputed domain names, and that *prima facie* showing remains un rebutted by the Respondent. The Complainant in this case asserts that the Respondent has no connection or affiliation with the Complainant and that the Respondent has not received any license or consent to use the THEPARKINGSPOT and SPOT (and Design) marks in a domain names. The Panel agrees with the Complainant's assertion that the use of the disputed domain name in these circumstances to point to websites with pay-per-click links does not constitute use in connection with a *bona fide* offering of goods and services. These assertions establish the Complainant's *prima facie* case.

The Respondent has not answered the Complainant's assertions, and, seeing no basis in the record to overcome the Complainant's *prima facie* showing, the Panel finds that the Complainant has satisfied this second element.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

The Complainant introduced evidence showing that it has extensively marketed and promoted the services it provides under the THEPARKINGSPOT and SPOT (and Design) marks. Additionally, the Complainant has introduced evidence of numerous trademark registrations owned by the Complainant in multiple jurisdictions. For these reasons, the Panel finds that the Complainant's marks are widely known for purposes of the Policy, and that it is likely that the Respondent targeted the Complainant's marks when it registered the disputed domain names. The mere registration of a domain name that is confusingly similar to such a mark by an unaffiliated entity can by itself create a presumption of bad faith registration of the disputed domain name. *bioMérieux v. May Padi*, WIPO Case No. [D2022-3696](#), citing *Government Employees Insurance Company v. Joel Rosenzweig, RegC*, WIPO Case No. [D2021-1221](#). Accordingly, the Panel finds the disputed domain names were registered in bad faith.

The Panel also finds that the Respondent has used the disputed domain name in bad faith. Bad faith use is shown from the Respondent's activities of using the disputed domain names to present pay-per-click links for commercial gain.

The Respondent's bad faith is also shown by its failure to respond to the Complainant's cease and desist communications and by using a privacy service to conceal its identity, making it more difficult for the Complainant to be assured that it had reached the Respondent with the initial communications.

For these reasons, the Panel finds that the Complainant has successfully met this third Policy element.

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 <parkingspotcoupon.com>, <theparkingspotaaadiscout.com>, <theparkingspotatbwi.com>, <theparkingspotatdfw.com>, <theparkingspotcouponcode.com>, <theparkingspotdia.com>, <theparkingspot hobby.com>, <theparkingspotlovefield.com>, <theparkingspotpromocode.com>, <thespotiahparking.com>, <thespotlaxparking.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: February 15, 2023