

ADMINISTRATIVE PANEL DECISION

Virtuoso Holding FZ-LLC v. Host Master, 1337 Services LLC
Case No. D2024-2043

1. The Parties

Complainant is Virtuoso Holding FZ-LLC, United Arab Emirates, represented by Viktoriia Adamchuk, United Arab Emirates.

Respondent is Host Master, 1337 Services LLC, Saint Kitts and Nevis.

2. The Domain Name and Registrar

The disputed domain name <app-spia-mspyitaly.com> (the “Domain Name”) is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 21, 2024. On May 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 23, 2024, 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 (Unknown) and contact information in the Complaint. The Center sent an email to Complainant on May 23, 2024 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 May 23, 2024.

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 June 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 24, 2024. The Center sent an email regarding the notification of the Complaint on July 4, 2024, granting an extension of the Response due date until July 9, 2024. Respondent sent an informal email to the Center on July 4, 2024.

The Center appointed Robert A. Badgley as the sole panelist in this matter on July 16, 2024. 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

Since May 2011, Complainant and its predecessors have manufactured and sold a “software product designed for tracking and monitoring mobile phones and tablets” under the mark MSPY. The first such firm, MTECHNOLOGY Ltd, assigned its trademark rights to BITEX GROUP LTD (“BITEX”) on April 3, 2014.

On September 29, 2015, the marks MSPY (word) and MSPY (design) were registered by BITEX with the United States Patent and Trademark Office (“USPTO”) under USPTO Reg. Nos. 4,820,570 and 4,820,568, respectively, in connection with “Computer application software for smart phones, handheld computers and computers for monitoring users’ locations and activities through their smart phones and computers”, with a May 2011 date of first use in commerce.

On July 11, 2023, BITEX assigned its trademark rights in MSPY (as registered in the United States and elsewhere) to Complainant. Since that time, Complainant has continued to manufacture and sell the MSPY products.

Complainant operates a commercial website at the domain name <mspy.org>.

Annexed to the Complaint are various links to articles reflecting unsolicited media recognition of Complainant’s MSPY products.

The Domain Name was registered on July 25, 2023. The Domain Name resolves to a commercial website purporting to offer Complainant’s products, as well as competitors’ products, for sale. Respondent’s site makes liberal use of Complainant’s MSPY mark and logo. The site features a purported spy app known as mSpyItaly.

According to Complainant, Respondent has no relationship with Complainant and is not authorized to use the MSPY mark in a domain name or otherwise. Complainant alleges that Respondent’s website creates the false impression that the user is buying Complainant’s products and that Respondent’s site is somehow affiliated with Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not file a formal response. Respondent’s entire statement to the Center is contained in the following July 4, 2024 email:

“Hi Mspyitaly is a registered trademark in the EU, Mspy has no right to make these requests, the app-spy Mspyitaly site is completely different from Mspy, Mspyitaly only works in Europe, Mspy is a scam site see all the negative reviews that trustpilot has, <https://it.trustpilot.com/review/mspy.com?stars=1>, Mspy does not accept competition and is always making disputes on every site Mspy also created this site

https://mspyitaly.it and not it is compliant with registered trademarks so Mspy has little to say when he is the first to create confusion with customers.”

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (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.

A. Identical or Confusingly Similar

The Panel finds that Complainant holds rights in the trademark MSPY through registration and use demonstrated in the record.

The Panel finds that the Domain Name is confusingly similar to that mark.

Notwithstanding the additional words in the Domain Name, the MSPY mark is recognizable within the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

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

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent claims to have a registered trademark for mSpyItaly in the European Union, but provides no evidence of this. Moreover, Respondent’s website makes heavy use of Complainant’s MSPY logo, which plainly betrays Respondent’s efforts to trade off the renown of Complainant’s mark. On the record provided, the Panel concludes that Respondent lacks rights or legitimate interests vis-à-vis the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant

who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
(ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
(iv) that by using the Domain Name, Respondent has intentionally attempted 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 of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates here its discussion above in the "Rights or Legitimate Interests" section. The Panel finds, on this record and on a balance of probabilities, that Respondent clearly targeted Complainant's MSPY mark in order to derive commercial gain through consumer confusion. This use of the Domain Name falls within the above-quoted Policy paragraph 4(b)(iv), and hence constitutes bad faith registration and use of the Domain Name.

Complainant has established Policy paragraph 4(a)(iii).

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 <app-spia-mspyitaly.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: July 29, 2024