

## **ADMINISTRATIVE PANEL DECISION**

ISI GmbH v. Tech Ops, SyncPoint, Inc.  
Case No. D2024-4055

### **1. The Parties**

The Complainant is ISI GmbH, Austria, represented by Wuersch & Gering LLP, United States of America (“United States”).

The Respondent is Tech Ops, SyncPoint, Inc., United States.

### **2. The Domain Name and Registrar**

The disputed domain name <sparklets.com> is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 2, 2024. On October 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 15, 2024, 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 (SyncPoint, Inc.) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 15, 2024, 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 amendment to the Complaint on October 17, 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 the Respondent of the Complaint, and the proceedings commenced on October 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2024. The Response was filed with the Center on November 6, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on November 11, 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.

On November 12, 2024 the Complainant sought permission to file a supplemental submission to address (i) the Respondent's request in its Response for a finding of Reverse Domain Name Hijacking; and (ii) the Respondent's failure to include in its response the certificate required by paragraph 5(b)(viii) of the Rules. While noting the Complainant's application, the Panel considers that it would be disproportionate to allow a further round of submissions for these purposes, and declines to grant the permission sought.

#### **4. Factual Background**

The Complainant is a limited liability registered in Austria.

The Complainant is the owner of United States trademark registration number 2409083 for the word mark SPARKLETS, registered on November 28, 2000 in International Class 6.

The Complainant recites the goods and services comprised in its trademark registration as follows: "metal cylinders and capsules for transporting compressed ( games ) \* gases \* which are used in conjunction with bottles and siphons for carbonating water, cream, milk or other liquids, and for filling inflatable objects, fire extinguishers, car safety air bags, co2 sporting guns, reusable spray cans, medical equipment, sonar buoys, life jackets and rafts."

Other than to say that one of its products is soda chargers, the Complainant provides no further or other information concerning its business history or profile, or otherwise as might be relevant to the public recognition and reputation of its trademark, whether at the date of registration of the disputed domain name or otherwise.

The disputed domain name was registered on March 24, 2003.

The Complainant provides evidence that, in May 2024, the disputed domain name resolved to a website inviting contact with an individual connected with the Respondent; and that a later date it simply promoted "Ideas for the Future" (without further details). At the date of this Decision, the disputed domain name resolved to a website headed: "Hey ISI GmbH... YOU LOSE... HIJACKER!" and summarizing elements of the Response as set out below.

The Complainant exhibits evidence that it messaged the Respondent (it is unclear on what date) indicating that it "would like to obtain" the disputed domain name. The Respondent replied that the disputed domain name was not listed or sale and asking: "Do you already have in place a sufficient profit/revenue stream related to the Sparklets name/branding, or an investor backing you for this potential acquisition effort?"

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is identical to its SPARKLETS trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It contends that its SPARKLETS trademark was registered prior to the disputed domain name, that the Respondent has no independent rights in the SPARKLETS mark, and that the disputed domain name has not been used for any purpose other than cybersquatting.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It states the disputed domain name was registered over two years after the Complainant's "well-known and distinctive mark" and was apparently registered in order to prevent the Complainant from registering a domain name corresponding to that mark.

The Complainant submits that its correspondence with the Respondent (referred to above) reveals the Respondent "as a cybersquatter acting in bad faith." The Complainant asserts that the Respondent should have offered to have transfer the disputed domain name to the Complaint, or to have offered to sell the disputed domain name for a sum equivalent to its out-of-pocket costs "or any other amount," however, the Respondent refused to consider a sale on the ground that it would only be interested in established business ventures or investor backing for a potential acquisition. The Complainant asserts that such response was incredible, given that the Respondent had itself made no legitimate use of the disputed domain name. The Complainant asserts that the Respondent's attempt to monetize the disputed domain name at the Complainant's expense clearly indicates its bad faith in the matter.

The Complainant requests the transfer or cancellation of the disputed domain name.

## **B. Respondent**

The Respondent states that it registered the disputed domain name without any knowledge of the Complainant's specific trademark interests. It highlights the geographical separation between the Complainant, located in Austria, and itself, located in the United States.

The Respondent submits that it registered the disputed domain name because of its common meaning and potential business development. It states that "sparklet" is a descriptive term, meaning a small spark or small sparking object. It submits that the disputed domain name is visibly and phonetically appealing and would be adaptable for diverse industries.

The Respondent contends that the term "sparklets" is not exclusively associated with the Complainant or its business. It refers to other uses of that term, including websites at "www.sparklet-soft.com", "www.sparklets.shop", "www.sparklet.it", and "www.sparklet.co.uk".

The Respondent submits that it never marketed the disputed domain name to the Complainant, but it was that Complainant that approached it, attempting to negotiate a purchase. The Respondent asserts that this approach acknowledged the Respondent's de facto rights in the disputed domain name, and that the Complainant has brought this proceeding after failing to acquire the disputed domain name amicably.

The Respondent also highlights the Complainant's 20-year delay in bringing this proceeding, and asserts that the Complainant registered <sparklets.net> in 2010, some seven years after the Respondent's registration of the disputed domain name.

The Respondent seeks a finding of Reverse Domain Name Hijacking.

## **6. Discussion and Findings**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has established that it is the owner of registered trademark rights in the mark SPARKLETS. The disputed domain name is identical to that trademark, and the Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

In the light of the Panel's finding on the issue of bad faith, below, it is unnecessary for the Panel to reach any conclusion in respect of the second element under the Policy.

### **C. Registered and Used in Bad Faith**

In order to establish registration of the disputed domain name in bad faith, it is incumbent on the Complainant to demonstrate that the Respondent registered the disputed domain name with knowledge of the Complainant's trademark rights, and in order to take unfair advantage of those rights. While the disputed domain name is identical to the Complainant's SPARKLETS trademark, it does not automatically follow that the Respondent must have been aware of that trademark, and the Complainant must show that there is evidence, or at least circumstances upon which to infer, that the Respondent is likely to have registered the disputed domain name with the Complainant's trademark in mind.

The Panel does not find the Complainant to have met the relevant burden in this case.

In particular, the Complainant appears to rely exclusively on its registered trademark rights, and provides the Panel with no information about its trading profile or business reputation at the time the disputed domain name was registered. It is well-established in prior proceedings under the UDRP that (save in limited circumstances which are not of application to this case) the concept of "constructive notice" of a trademark is generally insufficient for the purposes of the Policy. Complainants are therefore typically expected to provide information concerning their commercial activities (e.g., sales revenue, geographical scope, numbers of employees, locations and customers, media and industry recognition and awards, social media profile, etc.) in order to demonstrate that the Respondent was more likely than not to have been aware of (and targeted) their trademark. No such information is available to the Panel in this case.

Further, as observed in section 3.2.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"):

"...where the complainant's mark is not inherently distinctive and it also corresponds to a dictionary term or is otherwise inherently attractive as a domain name (e.g., it is a short combination of letters), if a respondent can credibly show that the complainant's mark has a limited reputation and is not known or accessible in the respondent's location, panels may be reluctant to infer that a respondent knew or should have known that its registration would be identical or confusingly similar to the complainant's mark."

In this case, the Panel accepts that the term "sparklets" has a dictionary meaning (albeit not one in particularly common usage) and that other commercial parties also make use of that term: for example, two of the websites cited by the Respondent are jewelry businesses. To be clear: the mere fact of additional third-party users of a mark in a different location and for different goods or services does not necessarily assist the respondent in showing its own independent rights to or legitimate interests in a domain name; it may tend however to show that there are possible uses that do not rely on awareness (or targeting) of a particular complainant's mark.

Furthermore, while not necessary for (and not used in) the disposition of the present case, merely anecdotally and in line with the reasoning applied here generally, the Panel has independently conducted a Google search against the term "sparklets", time-restricted to March 2003, being the date when the disputed domain name was registered, the results of which do not significantly refer to the Complainant. The Panel is

not therefore able to conclude, therefore, that the Complainant was more likely than not to have been aware of the Complainant's trademark rights at the time the disputed domain name was registered.

Nor does the Panel consider that the Respondent's reply to the Complainant's enquiry about purchasing the disputed domain name is indicative of bad faith. While that reply was no doubt unwelcome to the Complainant, there was no obligation on the Respondent to negotiate a sale to the Complainant on any particular terms, as the Complainant implies.

In the circumstances, the Complainant has failed to demonstrate to the satisfaction of the Panel that the disputed domain name was registered in bad faith, and the Complaint must necessarily fail.

#### **D. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute Reverse Domain Name Hijacking ([WIPO Overview 3.0](#), section 4.16).

In this case, the Respondent points to the Complainant's delay of 20 years in bringing any Complaint in respect of the disputed domain name, the Complainant's registration of the <sparklets.net> domain name in the intervening period, and the fact that the Complainant attempted to buy the disputed domain name from the Respondent (without asserting any wrongdoing on the Respondent's part), bringing this proceeding only after that attempt had been rebuffed. However, considering all the circumstances of the case, the Panel declines to make a finding of Reverse Domain Name Hijacking. In particular, in view of the fact that the disputed domain name is identical to the Complainant's SPARKLETS trademark, which had been registered over two years prior to the disputed domain name, the Panel does not consider this to be a case in which the Complainant knew or ought to have known that its Complaint could not succeed, or had a clear knowledge of an unequivocal lack of bad faith on the part of the Respondent (see e.g., section 4.16 of [WIPO Overview 3.0](#)).

#### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: November 25, 2024