

ADMINISTRATIVE PANEL DECISION

Tortoise Capital Advisors, L.L.C., Tortoise Index Solutions, LLC v.
Domain Admin, E-Promote
Case No. D2024-4383

1. The Parties

The Complainants are Tortoise Capital Advisors, L.L.C. and Tortoise Index Solutions, LLC, United States of America (“United States”), represented by Husch Blackwell LLP, United States.

The Respondent is Domain Admin, E-Promote, United States.

2. The Domain Name and Registrar

The disputed domain name <tortoisecapital.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 24, 2024. On October 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 25, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on October 30, 2024, providing the registrant and contact information disclosed by the Registrar, and informing the Complainant that the Center will proceed with the formal commencement of the administrative proceeding by November 1, 2024.

The Center verified that 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 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 21, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on November 26, 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

The Complainants are affiliates in the Tortoise Capital group, “an asset management company focused on traditional energy and power infrastructure investing” since 2002. Based in Overland Park, Kansas, United States, the Complainant Tortoise Capital Advisors, L.L.C. is a fund manager registered with the United States Securities and Exchange Commission (“SEC”) handling approximately USD 8 billion in assets, primarily in publicly traded companies in the energy and power distribution sectors. The group operates a website (the “Complainant’s website”) at “www.tortoiseadvisors.com”, a domain name that was created in November 2002. Some of the group’s assets, including the registered trademarks listed below, are managed by the Complainant Tortoise Index Solutions, LLC. Group members commonly use the unregistered TORTOISE CAPITAL name and mark, as well as an accompanying registered figurative mark depicting the letter “T” in a circular design logo.

The Complainants request consolidation of their complaints against the Respondent on the grounds that they share an interest in the relevant trademark rights and are similarly affected by the Respondent’s conduct. The Respondent has not objected or otherwise replied. Given these facts, unless otherwise indicated the Panel refers to the Complainants hereafter collectively as “the Complainant”. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 4.11.1 (efficiency and equity in consolidation scenarios).

The Complainant’s United States trademark registrations include the following:

Mark	Registration Number	Registration Date	Goods or Services
TORTOISE MLP INDEX (word)	3913099	February 1, 2011	International Class 35
TORTOISE GLOBAL WATER ESG INDEX (word)	5654072	January 15, 2019	International Class 35

The Complainant also claims that TORTOISE CAPITAL has attained distinction as an unregistered word mark associated with the Complainant’s asset management services in the energy and power infrastructure industry over the past twenty years. The Complainant offers as evidence screenshots of its website, its LinkedIn profile, references to a podcast run by the Complainant, and several media articles related to the Complainant’s business.

The Registrar reports that the disputed domain name was created on March 5, 2000, and is registered to the Respondent, showing the “contact” as Domain Admin and the “company” as E-Promote, with a postal address in Las Vegas, Nevada, United States and a contact email using the domain name <e-promote.com>. That domain name does not resolve to an active website at the time of this Decision.

The Respondent is not the original owner of the disputed domain name. The Complaint attaches screenshots showing that the Complainant itself used the disputed domain name from 2000 through at least July 2013. Thus, the Respondent acquired the disputed domain name at some point after that.

In recent months and at the time of this Decision, the disputed domain name has resolved to a landing page with layers of “sponsored” (pay-per-click or “PPC”) advertising links to various third parties. The landing page does not identify the website operator. A screenshot dated October 17, 2024, attached to the Complaint, shows that one of the top-level links on the landing page advertised “Investment Management”

services. A version of the landing page on October 31, 2024, also included a link labelled “Capital Investment”. A statement at the top of the landing page states as follows:

“tortoisecapital.com is no longer in business and has recently been listed for sale. Click here to inquire.”

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical to its common law TORTOISE CAPITAL mark and confusingly similar to its registered TORTOISE-derivative marks, including the primary term “tortoise” with the relevant descriptive term “capital” that describes the Complainant’s asset management business. The Complainant argues that the Respondent has no permission to use the marks in the disputed domain name and no other rights or legitimate interests, as a PPC parking page exploiting the reputation of a third party does not represent a bona fide commercial offering.

The Complainant also urges a finding of bad faith on the grounds that this is an instance of intentionally misdirecting Internet users for commercial gain. The Complainant asserts further that the Respondent has engaged in a pattern of abusive registrations to prevent trademark holders from reflecting their marks in corresponding domain names, identifying thirteen other UDRP proceedings where the Respondent was found to have engaged in cybersquatting, most recently in *Infojobs Brasil Atividades de Internet Ltda. v. Domain Admin, E-Promote*, WIPO Case No. [D2022-4909](#).

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

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. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark (the registered TORTOISE-derivative marks) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

It is likely that the Complainant has protectible unregistered trademark or service mark rights in TORTOISE CAPITAL based on use over more than two decades, although this finding is not necessary to establish standing for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The entirety of the common law TORTOISE CAPITAL mark is reproduced within the disputed domain name, and the primary “TORTOISE” element of the registered TORTOISE-derivative marks is included in the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the Complainant’s marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. PPC use of a domain name does not represent a legitimate interest “where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users” ([WIPO Overview 3.0](#), section 2.9), as has been the case here.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Complainant furnishes evidence that the Respondent is a long-time domainer who is the registrant of over 18,000 domain names. It is likely that the Respondent automates the process of purchasing domain names with expired registrations and parking them on a landing page for PPC revenues pending eventual resale, where the hosting company’s algorithms serve up links to potentially relevant advertisers. See, e.g., Wikipedia article on “Domain Name Speculation”. This does not relieve the Respondent of its responsibility under the registration agreement to refrain from using a domain name in a manner that infringes on the rights of others. Failing to do so constitutes bad faith under the Policy. Professional domainers certainly may be expected to be aware of the risks of trademark infringement if they automate purchases without review, and the Respondent in this case has already had several domain names taken away in UDRP proceedings because they were identical or confusingly similar to trademarks. The disputed domain name in this instance is comprised of dictionary words, but the words “tortoise” and “capital” are not normally combined, apart from the Complainant’s distinctive and fanciful name and mark. Thus, this proceeding does not arguably concern innocent, automated speculation in a dictionary term alone such as “capital.com”. Moreover, the reference at the head of the Respondent’s landing page to the domain name being “no longer in business” is not typical of PPC landing pages and seems to reveal awareness that the Complainant itself formerly used the disputed domain name to advertise its business.

In these circumstances, the Panel finds that the Respondent’s conduct reflects bad faith as exemplified in the Policy, paragraph 4b(iii) (a pattern of bad faith conduct depriving trademark holders of corresponding domain names) and 4(b)(iv) (intentionally attracting Internet users for commercial gain with a domain name confusingly similar to a trademark).

The Panel finds that the Complainant has established the third 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 <tortoisecapital.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: December 9, 2024