

ADMINISTRATIVE PANEL DECISION

Timec Oil and Gas, Inc. v. Domain Admin, Privacy Protect, LLC
(PrivacyProtect.org) / Guy Ngassa, The Solution Engineering Group
Case No. D2022-0064

1. The Parties

Complainant is Timec Oil and Gas, Inc., United States of America (“United States” or “US”), represented by Vorys, Sater, Seymour and Pease, LLP, United States.

Respondent is Domain Admin, Privacy Protect, LLC (PrivacyProtect.org), United States / Guy Ngassa, The Solution Engineering Group, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 7, 2022. On January 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 10, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

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 Respondent of the Complaint, and the proceedings commenced on January 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2022. The Response was filed with the Center on February 1, 2022.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on February 9, 2022. 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

Complainant, Timec Oil and Gas, Inc., is a provider of mechanical, maintenance, turnaround, and construction services in the oil and gas industry. Complainant uses the mark TIMEC in connection with its services and owns a trademark registration for its TIMEC mark in the United States (Registration No. 6,175,572). That registration, which is of particular relevance in this proceeding, was filed on December 9, 2017 on an intent-to-use basis and issued to registration on October 13, 2020 with a claim of first use of July 13, 2020. Complainant also owns and uses the domain name <timec.com> to provide information concerning Complainant and its services.

Respondent Guy Ngassa is the President of a company called Timec Services, Inc, which purports to provide oil and gas related tank inspection, environmental consulting, and commercial supply services. Respondent's Timec Services, Inc. company was incorporated on December 28, 2017 in Texas. Respondent registered the disputed domain name on October 12, 2017. Respondent has used the disputed domain name in connection with a website providing information regarding Respondent's services.

On July 23, 2021, Complainant through its attorneys sent Respondent a demand letter regarding the disputed domain name and Respondent's use of the TIMEC mark. Respondent appears to have rejected Complainant's demands and the parties engaged in limited subsequent negotiations during which Respondent offered to sell the disputed domain name for USD 100,000. No agreement was reached and the disputed domain name continues to resolve to Respondent's website.

5. Parties' Contentions

A. Complainant

Complainant asserts that its TIMEC mark enjoys "widespread public recognition." Complainant maintains that the TIMEC mark has been in use since 1971 and in that regard maintains that its United States trademark registration for the TIMEC mark includes an incorrect first use date that Complainant is in the process of amending.

Complainant maintains that the disputed domain name is identical or confusingly similar to Complainant's TIMEC mark, as TIMEC is fully included in and the first and dominant component of the disputed domain name. Complainant further maintains that the inclusion of the word "services" does not distinguish the disputed domain name.

Complainant argues that Respondent has no rights or legitimate interests in the disputed domain name as Respondent does not appear to be actually making any offering of goods and services in commerce. In that regard, Complainant advises that it engaged an independent investigative service to investigate Respondent. The investigation according to Complainant did not find (i) any evidence showing that Respondent is providing any service through the disputed domain name or otherwise through the Timec Services, Inc. company, (ii) any professional licenses for Timec Services, Inc. or its officer, Guy Ngassa, (iii) any trademark filings by or newspaper articles regarding Timec Services, Inc., or (iv) any proof that any actual services are being provided in the United States or outside the United States.

Lastly, Complainant contends that Respondent registered and used the domain name in bad faith and with awareness of Complainant given that "Timec Oil and Gas, Inc. was founded in 1971 and is well-known in the oil and gas, energy and chemical industries" and Respondent founded its Timec Services, Inc. company in 2018 with an office in Texas, the very state Complainant has its headquarters. Complainant maintains that a simple Google search would have informed Respondent of the existence of Complainant and its services. Complainant also argues that because Respondent is not making any *bona fide* offering of goods and services with the disputed domain name and asked for USD 100,000 for the disputed domain name,

Respondent registered and used the disputed domain name for Respondent's profit or some illegitimate purpose.

B. Respondent

Respondent contests Complainant's contentions and contends that the Timec Services, Inc. company was legally registered in the State of Texas to provide legitimate services in the oil and gas industry. Respondent asserts that in June 2017 he created a company called Tank Integrity Management and then with a joint business called Environmental Consulting Services formed a company called Timec Inc. in Texas on August 8, 2017. Respondent then developed another business called Industrial & Commercial Supply and ultimately formed the company Timec Services, Inc. on December 28, 2017. Respondent claims that Timec Services Inc. stands for "Tank Integrity Management & Environmental Consulting Services Inc."

Respondent argues that the disputed domain name was registered by Respondent prior to Complainant's trademark application for the TIMEC mark on December 9, 2017 or its subsequent registration on October 13, 2020. Respondent maintains that it is a small business and that its services are not directed to entities in the United States and Canada, although the company is headquartered in the US and has liaison offices in Canada and France. Respondent specifies that its primary markets are in Africa, Qatar, and Saudi Arabia and that they have communicated with potential clients there through Respondent's website at the disputed domain name.

Respondent contends that the services of the Timec Services, Inc. company are different from those offered by Complainant. Respondent reiterates that its services are directed to potential clients in foreign markets outside of the United States and Canada. Respondent also contends that it did not register the disputed domain name to resell it to anyone and that the offer to sell the disputed domain name to Complainant for USD 100,000 came after Complainant contacted Respondent and was "made to discourage Complainant."

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See section 1.2.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Complainant has provided evidence that it owns a registration for the TIMEC mark in connection with its services.

With Complainant's rights in the TIMEC mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the TLD such as ".com") is identical or confusingly similar with Complainant's mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name, and generally panels have found that fully incorporating the identical mark in a disputed domain name is sufficient to meet this initial standing requirement.

In the instant proceeding, the disputed domain name is identical to Complainant's TIMEC mark as it fully incorporates TIMEC at the head of the disputed domain name, in addition to the term "services." As such, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant's TIMEC mark and in showing that the disputed domain name is confusingly similar to that trademark.

B. Rights or Legitimate Interests

Given that Complainant has not established the third element of bad faith registration and use, as discussed below, the Panel does not need to address the issue of whether Respondent has rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must establish the conjunctive requirement that the respondent registered and used the disputed domain name in bad faith. The assessment of whether a disputed domain name was registered in bad faith has to be assessed at the time of the registration of the disputed domain name.

In the instant case, Complainant initially relies on its United States trademark registration for TIMEC. That registration, though, was filed on December 9, 2017 almost two months after Respondent registered the disputed domain name on October 12, 2017. The TIMEC application matured to registration on October 13, 2020 with a claimed first use date of July 13, 2020. Thus, based on the registration alone, Respondent registered the disputed domain name before Complainant had any registered trademark rights in the TIMEC mark.

Complainant maintains in a footnote in the Complaint that the actual first use date of the TIMEC mark was in 1971 and that it is in the process of amending its United States registration for the TIMEC mark to reflect that first use date. As Complainant submitted no evidence to show that it is in fact amending its registration, the Panel in its discretion under its general powers pursuant to paragraphs 10 and 12 of the UDRP Rules has for the benefit of the Parties reviewed the United States Patent and Trademark Office ("USPTO") records for the TIMEC registration that are publicly available online. See section 4.8 of the [WIPO Overview 3.0](#).

Initially, the Panel notes that based on documents provided by Complainant and on the Panel's review of the USPTO files reveal there is much history underlying Complainant's TIMEC registration. The original application for the TIMEC mark was filed on an intent-to-use basis by another party called Broadspectrum Americas, Inc. ("Broadspectrum"), who is not a party to this proceeding. Per the USPTO records, Broadspectrum then appears to have filed a change of name document to Ferrovia Services U.S., Inc. ("Ferrovia") on May 14, 2018. The TIMEC application issued to registration on October 13, 2020 and was subsequently assigned by Ferrovia to Complainant on September 9, 2021.

None of this history is discussed by Complainant in its papers, and nothing is provided on what the relationship between Complainant, Ferrovia, or Broadspectrum might have been, although from a listing in a Google search results page for "timec services" provided by Complainant it appears that Complainant's company was purchased from Ferrovia in November 2021. That being said, on January 13, 2022, Complainant indeed filed an amendment with the USPTO claiming that certain goods or services in the TIMEC registration have a first use date of February 1, 1971. No specimens showing use of the TIMEC mark in 1971, however, appear to have been submitted by Complainant with the amendment. That amendment is currently pending before the USPTO.

Whether Complainant will be successful in amending the first use or first use in commerce dates for the TIMEC registration, given that the underlying application was filed on an intent-to-use basis by Broadspectrum in December 2017, is beyond the scope of this proceeding. However, this after-the-fact amendment does not change the facts before the Panel in the present Complaint and as they existed on

October 12, 2017 when Respondent registered the disputed domain name. At that time there was no pending application or active registration for the TIMEC mark.

As Complainant does not own a trademark registration or application for the TIMEC mark that predates the registration of the disputed domain name, Complainant's claim that the TIMEC mark has been in use since 1971 is essentially a claim that Complainant owns some common law or unregistered rights in the TIMEC mark that predate Respondent's registration of the disputed domain name. That is particularly relevant given that Complainant claims that "[I]t is implausible that Respondent had no knowledge of Complainant, given its wide-reaching reputation in the industry and it having been in business for almost half of a century when Respondent formed its company."

Proving the existence of such common law or unregistered rights requires a complainant to show with actual evidence when its claimed mark became a distinctive identifier which consumers associate with the complainant's goods or services. See section 1.3 of [WIPO Overview 3.0](#). Proof of such rights cannot be based on conclusory allegations. *Id.* For this reason, Panels have generally required that a complainant make a strong showing with relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) through a range of factors, such as (i) the duration, extent and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. *Id.*, and cases cited therein.

Specific evidence supporting assertions of secondary meaning should be included in the Complaint. Conclusory allegations of unregistered or common law rights without any supporting evidence are entitled to no weight and simply do not suffice in establishing common law rights. See section 1.3 and 3.1 of [WIPO Overview 3.0](#).

Here, Complainant's assertion of rights going back to 1971 and of being well-known in the oil and gas industry prior to the registration of the disputed domain name is built entirely on conclusory and unsubstantiated statements by its counsel. What is missing in Complainant's submissions is any evidence supporting these claims. What evidence Complainant has provided is from 2022 when the Complaint was filed. Such evidence does not prove the existence of common law or unregistered rights in TIMEC prior to October 2017.

Whether TIMEC was well-known or even in use prior to when Respondent registered the disputed domain name on October 12, 2017 is even more questionable given that Ferrovial (originally Broadspectrum), the prior owner of the TIMEC mark, filed an intent-to-use application in December 2017, as opposed to a use based application, for a mark that Complainant now claims was well-known at that time in the oil and gas industry. Indeed, while Complainant points to use of the domain name <timec.com>, it has simply provided a Whois record for that domain name. Complainant submitted nothing showing that TIMEC was in fact being used prior to October 2017 or that the domain name <timec.com> was even in use at that time and for what.

The Panel is mindful that Respondent's actions here do create some questions, particularly in light of Complainant's alleged investigation regarding Respondent's business, copies of which have not been provided or included in the annexes to the Complaint, and Respondent's failure to provide evidence that it is in fact providing actual services under the TIMEC mark apart from some email communications with mostly US-based companies for alleged potential projects in Africa. To be sure, the registration of the disputed domain name and of a company name using "timec" for a company in the oil and gas industry with its headquarters in Houston, Texas (the same metropolitan area where Complainant is based) does raise an issue of potential trademark infringement or unfair competition if, in fact, Complainant's predecessor in interest had made use of the TIMEC mark since 1971 and before October 12, 2017 and enjoyed some reputation in the oil and gas industry. Certainly, Respondent's monetary demand of USD 100,000, while under the evidence before the Panel does not *per se* suggest bad faith, could be potent evidence of bad faith if in fact the use of the TIMEC mark in the oil and gas industry, the very same industry Respondent now claims to be operate in, dates back to 1971 and was well-known in that industry.

Certainly, the filing of an intent-to-use application in December 2017 by Complainant's predecessor raises questions given Complainant's claimed use of TIMEC since 1971. Such filing may have been inadvertent or may have resulted from a desire by Broadspectrum to resume the use of TIMEC, a mark that may have once been used and then shelved or used for services other than those applied for. These questions are all well beyond the scope of the UDRP.

In sum, what Complainant has presented is lacking and leaves several open questions. However, Respondent's own evidence likewise does create some issues and questions as to whether Respondent provides any actual services under the Timec Services name or whether such claimed use is pretextual in nature. Such issues are better left to a court of competent jurisdiction where discovery and cross-examination of witnesses is possible. However, based on the evidence before the Panel, Complainant has failed to prove bad faith registration by Respondent of the disputed domain name and thus Complainant's Complaint fails.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: February 23, 2022