

ADMINISTRATIVE PANEL DECISION

Itron, Inc. v. Super Privacy Service LTD c/o Dynadot / Nanci Nette, Name Management Group
Case No. D2022-1249

1. The Parties

Complainant is Itron, Inc., United States of America (“United States” or “U.S.”), represented by Lee & Hayes, United States.

Respondent is Super Privacy Service LTD c/o Dynadot, United States / Nanci Nette, Name Management Group, United States.

2. The Domain Name and Registrar

The disputed domain name <itronhdc.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 8, 2022. On April 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on April 12, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 12, 2022.

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 Respondent of the Complaint, and the proceedings commenced on April 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 16, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on May 18, 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

Without contest by Respondent, Complainant asserts in its Complaint as amended, and its Annexes attached provide evidence sufficient to support that:

Complainant Itron, Inc., is a well-known technology company that offers energy and water resource management products and services under the trademark ITRON (the "ITRON Mark") since 1979 and is particularly known for its metering technology used for electricity, gas, and water utility providers.

"HDC", the term added to Complainant's ITRON Mark to form the disputed domain name <itronhdc.com> is a designation for "high direct currents", a descriptive term in Complainant's energy metering technology Industry.

Complainant claims worldwide recognition of the ITRON Mark based on over 200 million of its metering devices deployed worldwide and use of the mark since at least as early as 1979 and submits content supporting its claims for such world-wide recognition in the Annexes to its Complaint.

Since 1993 Complainant has operated its official website, accessed through its domain name <itron.com> at "www.itron.com" (the "Official ITRON Website") to promote and provide information on its energy and water management services and metering technology products.

Complainant owns a number of trademark registrations protecting the ITRON Mark in the United States, including:

United States Trademark Registration No. 1,519,639, ITRON, registered with the United States Patent and Trademark Office ("USPTO") on January 10, 1989, for a range of data collection and computer systems related products in international class 9 and claiming a first use date of January 31, 1979.

United States Trademark Registration No. 1,534,650, ITRON, registered on April 11, 1989, for computer system repair and maintenance services in international class 37 and claiming a first use date of January 31, 1979.

United States Trademark Registration No. 1,921,754, ITRON, registered on September 26, 1995, for a range of data collection communication network system products in international class 9 and claiming a first use date of August 1, 1980.

The disputed domain name was registered on July 7, 2019, and redirects users to malware download websites, random websites offering unrelated retail and fashion products, and websites used to distribute a virus that infected users' computers. Respondent Nanci Nette has been named as a respondent in over 50 UDRP cases and prior UDRP panels have found that Respondent to have engaged in a pattern of abusive conduct where a registrant 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.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's trademark, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall "draw such inferences therefrom as it considers appropriate".

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied.

The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

A. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the coined term ITRON for various social networking website and mobile app products and services dating back to 1989. Sufficient evidence has been submitted, in the form of electronic copies of active United States registration certificates, showing the above referenced trademark registrations for the ITRON Mark in the name of Complainant. Complainant has through such valid and subsisting trademark registrations demonstrated its rights in the ITRON Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant's rights in the ITRON Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's ITRON Mark.

It is well accepted that the first element functions primarily as a standing requirement and that the 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. Prior UDRP panels have also held "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". See, *id*; see also, *Wal-Mart Stores, Inc. v. MacLeod d/b/a/ For Sale*, WIPO Case No. [D2000-0662](#).

A side by side comparison between the disputed domain name and the ITRON Mark shows the disputed domain name consists of the Mark in its entirety and adds “hdc”, a designation for a “high direct currents” meter, a descriptive well-known term in Complainant’s energy metering industry, in which Complainant is well-known.

Numerous prior UDRP panels have held that the addition of a descriptive term to a complainant’s mark fails to prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

Finally, the Top-Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.co”) typically adds no meaning or distinctiveness to a disputed domain name and is viewed as a standard registration requirement; as such it is disregarded under the paragraph 4(a)(i) analysis. Accordingly, the TLD of the disputed domain name here, “.com”, does not avoid a finding of confusing similarity. See, [WIPO Overview 3.0](#), section 1.11; see also *Research in Motion Limited v. Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#).

In light of the above, the Panel finds the disputed domain name confusingly similar to the ITRON Mark in which Complainant possesses rights and Complainant has thus satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, the complainant has to make out a *prima facie* case that the respondent does not have rights to or legitimate interests in the disputed domain name, upon which the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the disputed domain name. If the respondent fails to come forward with such evidence, a complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also *The American Automobile Association, Inc. v. Privacy--Protect.org et al.*, WIPO Case No. [D2011-2069](#).

Paragraph 4(a)(ii) of the Policy also directs an examination of the facts to determine whether a respondent has rights or legitimate interests in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or interests.

The first example, under paragraph 4(c)(i), is where “before any notice to you 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”.

Here, the annexes to the Complaint show that Respondent is using the disputed domain name to create a false association with Complainant for illegitimate purposes, namely, to redirect users to malware download websites, random websites offering unrelated retail and fashion products for commercial gain, and websites used to distribute a virus that infected users’ computers. Prior UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.” [WIPO Overview 3.0](#), section 2.13. See also *24/7 Real Media Inc. v. Thomas Schultz*, WIPO Case No. [D2009-0043](#).

Based on the foregoing, this Panel finds the disputed domain name is not being used in connection with a *bona fide* offering of goods or services and Respondent use of the disputed domain for such illegitimate purposes means it has no rights or legitimate interests in the disputed domain name under the factors specified by paragraph 4(c)(i) of the Policy.

The second example, under paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the domain name. Complainant has not provided Respondent authority to use Complainant's ITRON Mark, or to own, operate, maintain, or register websites in its name, or to utilize a web address confusingly similar to Complainant's ITRON Mark. Complainant also shows that Respondent is not commonly known by the disputed domain name because the original Respondent listed in the Whois record submitted with the initial Complaint displayed "Super Privacy Service LTD c/o Dynadot." of the United States. The Registrar identified the underlying registrant in its verification process, "Nanci Nette" also of the United States, who has been added via the amended Complaint as a co-Respondent in addition to the original Respondent. Neither Respondent bears any resemblance to the disputed domain name whatsoever. Thus, there is no evidence in this case to suggest that Respondent is commonly known by the disputed domain name, that it is licensed or otherwise authorized to use Complainant's trademark, or that it has acquired any trademark rights relevant thereto. As such, the Panel finds this sub-section of the Policy is of no help to Respondent and the facts presented here again support a lack of rights and legitimate interests in the disputed domain name. See *Expedia, Inc. v. Dot Liban, Hanna El Hinn*, WIPO Case No. [D2002-0433](#).

Complainant has met its initial burden of proof as it is generally regarded as *prima facie* evidence of no rights or legitimate interests if a complainant shows that the disputed domain name is identical or confusingly similar to Complainant's trademark, that Respondent is not commonly known by the disputed domain name, and that Complainant has not authorized Respondent to use its Mark (or an expression which is confusingly similar to its Mark), whether in the disputed domain name or otherwise. See, *Roust Trading Limited v. AMG LLC*, WIPO Case No. [D2007-1857](#); see also *Abbott Laboratories v. Li Jian Fu, Li Jian Fu*, WIPO Case No. [D2016-0501](#).

As to the third and final example under paragraph 4(c)(iii) of the Policy, the Panel finds there is no evidence here that Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant's trademark. Given Respondent's illegitimate use and illegal activity noted previously for Respondent's commercial gain, there is no *bona fide* offering nor any plausible fair use to which the disputed domain name may be put under the circumstances of this proceeding. See [WIPO Overview 3.0](#), section 2.13.

In light of the above, and with no Response or other submission in this case to rebut Complainant's assertions and evidence, the Panel finds that the facts of this case demonstrate that Respondent has no rights or legitimate interests in the disputed domain name. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#). Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, as noted in 6B. above, Respondent is using the disputed domain name for illegal activity, redirecting users to malware download websites, random websites offering unrelated retail and fashion products for Respondent's commercial gain, and websites used to distribute a virus to infect Internet users' computers. Prior UDRP panels have held that such actions constitute registration and use in bad faith because, among other things, they "disrupt the business of a competitor (Complainant)" under paragraph 4(b)(iii) of the Policy, and "intentionally attempt to attract, for commercial gain, Internet users to [Respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [Respondent's] web site or location or of a product or service on [Respondent's] web site or location" under paragraph 4(b)(iv) of the Policy. See, e.g., *ZB, N.A., dba Zions First National Bank v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2017-0386](#) (providing link to

malware); and *CenturyLink Intellectual Property LLC v. By Proxy, Inc. Domain Names*, WIPO Case No. [D2014-1147](#) (providing link to virus).

Given the widespread recognition of Complainant's ITRON Mark in the U.S., where Respondent is located, after decades of use by Complainant before Respondent registered the disputed domain name in 2019, Respondent likely had actual knowledge of Complainant's ITRON Mark when it registered the disputed domain name, which shows bad faith registration. See *Western Union Holdings, Inc. v. Manuel Rodriguez*, WIPO Case No. [D2006-0850](#).

Prior UDRP panels have also held that a respondent's selection of a disputed domain name that comprises the complainant's mark in its entirety demonstrates a respondent's actual knowledge to support a finding of bad faith in registering and using the domain name. See, e.g., *Lloyds Bank Plc v. Marc Wiese*, WIPO Case No. [D2015-0914](#); see also, *Heineken Brouwerijen B.V. v Mark Lott*, WIPO Case No. [D2000-1487](#).

The disputed domain name incorporates Complainant's Mark in its entirety and is essentially identical to both Complainant's Mark and its <itron.com> domain name, coupled with a descriptive term "hdc" representing a type of current, handled by a meter which Complainant offers. Therefore, it is reasonable to infer, that Respondent chose the disputed domain name to bolster its false association with Complainant to further Respondent's commercial gain in light of Complainant's well known status in the metering technology industry.

With no explanation or submission from Respondent to dispute Complainant's assertions or the presented facts of this case, this Panel finds it reasonable to conclude that it is more likely than not that Respondent registered the disputed domain name with actual knowledge of Complainant's trademark rights in order to take unfair advantage of its similarity with the disputed domain name and Complainant's recognition within the metering technology industry.

The Panel finds that the circumstances of this case, Respondent's registration of the disputed domain name with awareness of Complainant and the ITRON Mark, and with the absence of any of its own rights or legitimate interests, leads to a conclusion of registration in bad faith by Respondent. See *Royds Worthy King LLP v. Help Tobuy*, WIPO Case No. [D2019-0624](#).

Finally, Complainant contends Respondent Nanci Nette has been named as a respondent in multiple prior UDRP proceedings, and prior UDRP panels in a number of those proceedings have found that Respondent has been engaged in an abusive pattern of domain name registration to prevent mark owners from being able to utilize the domain names. See, e.g., *Veolia Environnement SA v. Nanci Nette, Name Management Group*, Case No. [D2017-1511](#); *Facebook, Inc. and WhatsApp Inc. v. Registration Private, Domains By Proxy, LLC / Nanci Nette*, WIPO Case No. [D2019-2223](#); and *Slack Technologies, Inc. v. Registration Private, Domains by Proxy, LLC / Nanci Nette, Name Management Group*, WIPO Case No. [DCO2020-0018](#).

Paragraph 4(b)(ii) of the Policy provides that bad faith is evidenced where a registrant 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 [the registrant has] engaged in a pattern of such conduct". Prior UDRP panels have found a very small number of cases, as few as two, is sufficient to establish a pattern. See, e.g., *Inter-Continental Hotels Corporation v. James Alex, Design Factory*, WIPO Case No. [D2010-0974](#) ("two domain names... indicate a 'pattern' of conduct by Respondent"); *General Electric Company v. Normina Anstalt a/k/a Igor Fyodorov*, WIPO Case No. [D2000-0452](#); and *Telstra Corporation Limited v. Ozurfs*, WIPO Case No. [D2001-0046](#).

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied paragraph 4(a)(iii) 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, <itronhdc.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: June 6, 2022