

ADMINISTRATIVE PANEL DECISION

Samet Kalıp Ve Madeni Eşya Sanayi Ve Ticaret A.Ş v. Samet & Company, Inc.

Case No. D2022-1449

1. The Parties

The Complainant is Samet Kalıp Ve Madeni Eşya Sanayi Ve Ticaret A.Ş, represented by Koyuncuoğlu & Köksal Avukatlık Bürosu, Türkiye.

The Respondent is Samet & Company, Inc., United States of America (“United States”), represented by Manevitz Law Firm LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <samet.com> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 22, 2022. On April 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 2022, 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 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 April 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2022. On May 6, 2022, the Respondent sent an email communication to the Center requesting an extension of the Response due date. Pursuant to paragraph 5(b) of the Rules, the due date was extended to May 21, 2022. On May 18, 2022, the Center received an email communication from the Respondent requesting for a further extension due to hospitalization affecting finalization of the Response. The Center in accordance with paragraph 5(e) of the Rules, exceptionally

granted the Respondent an extension of time until May 31, 2022. The Response was filed with the Center on May 31, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on June 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

The Complainant was established in Istanbul, Türkiye in 1973 as a provider of furniture accessories such as hinge systems, drawer slide systems, drawer box systems, lifters, sliding doors and accessories. Its operations have expanded around the world and it now employs 1,166 employees including 88 employees in research and development. It is also the holder of numerous patents.

The Complainant has 300 outlets in Türkiye and export operations to more than 80 countries including the United States, Russian Federation, Germany, United Kingdom, Italy, Spain, India, and China, amongst others.

To facilitate these operations, the Complainant established an office in Guangzhou, China in 2006, incorporated Samet BV in the Netherlands in 2012, Samet Furniture Technology LLC in the Russian Federation in 2013, and Samet US, Inc. in Miami, Florida in the United States in May 2018. The Complainant also has “alliance partners” in a number of other countries.

The Complainant participates in international furniture and furniture accessories trade shows every year including the International Woodworking Fair and the Association of Woodworking & Furnishings Suppliers Fair in the United States, Interzum in Germany, SICAM in Italy, and MEBEL in the Russian Federation. The Complainant promotes its products from a website at “www.samet.com.tr”, which it registered in 1997, <samet.nl> which it registered in 2010, <sametitaly.it> which it registered in 2011, and <samet-us.com> which it registered in June 2015. (At the time this decision is being prepared, <samet.nl> and <sametitaly.it> do not resolve to active websites.)

Since at least 2014, the Complainant’s products have appeared on numerous websites around the world. The links identified in Annex 7 to the Complaint date from 2014 and, while this is not true of all the links, most appear to be product pages on different websites such as “www.compofurniture.com”, “www.mebelrus.ru”, “bylerindustrialtool.com”, “www.hollman.com”. Some appear to be trade publications, such as “www.woodshopnews.com” and “www.engineering.com”.

The Complaint includes evidence that the Complainant holds a substantial portfolio of registered trademarks and pending applications around the world. Of particular relevance to the present proceeding, these include:

(a) S SAMET, which is International Registration No. 894667, specifying a range of goods in International Classes 6 and 20. This trademark was registered on December 31, 2004, designating a number of countries and jurisdictions including the United States, which is now Registered Trademark No. 3,335,432 which was formally registered in the Principal Register on November 13, 2007; and

(b) SAMET, specifying a range of goods and services in International Classes 6 and 20 also. The earliest registration appears to be Turkish Registered Trademark No. 83/77250 which was applied for in 1993 and formally registered in December 1993. Apart from the registration in Türkiye, the registrations in other jurisdictions have been applied for and registered on various dates between 2017 and 2020. These include United States Registered Trademark No. 5,938,865, which was filed on April 6, 2018, and registered in the Principal Register on December 17, 2019.

The United States registered trademarks both claim a first use in commerce in the United States on

September 30, 2013.

The Respondent was incorporated in the United States on December 26, 1995. Its principal is Dr. Michael G Samet, who was born in 1943.

The Respondent registered the disputed domain name on March 22, 1996.

From Wayback Machine records, it appears the disputed domain name resolved to a website which included links related to buying second-hand automobiles and purchasing tax return software. After a period in which it does not appear to have resolved to a website at all, it now resolves to a parking page provided by the hosting service which displays a number of “related searches” such as “Sliding French Patio Doors”, “Sliding Patio Door Prices”, “Front Door Design Ideas” and the like. The Response says the disputed domain name is in use to provide email addresses.

Between June 2021 and November 2021, representatives of the Complainant made unsolicited approaches by email to the Respondent inquiring if the disputed domain name was for sale. The Respondent did not respond to these.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark rights.

There is no dispute between the parties that, disregarding the “.com” generic Top-Level Domain (“gTLD”),¹ the disputed domain name is identical to the Complainant’s SAMET trademark.

Accordingly, the Panel finds that the Complainant has established the requirement under the first limb of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

¹ For example, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.11.

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the 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 the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

It is not in dispute between the parties that the Complainant has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with the Complainant.

The Complainant alleges that the Respondent is operating a website at "www.sametcpa.com". The Respondent denies any association with that domain name. It resolves to a website of what appears to be an accountancy firm based in Massachusetts in the United States unrelated to the Respondent or his business activities.

The Complainant also contends that the Respondent is not engaged in any commercial activity regarding the disputed domain name and has never been known by the disputed domain name. The Complainant points out that the website to which the disputed domain name resolves is not an active website but is a parking page with advertising listings and links. The Complainant also submits evidence that the Respondent holds in excess of 100 domain names (the precise number of which is in dispute), at least some of which resolve to parking pages. As a result, the Complainant contends that the Respondent registered the disputed domain name "to obtain an unjustified commercial gain by selling the disputed domain name to third persons."

The Respondent denies these allegations. It points out that "Samet" is the surname of the Respondent's principal. The Respondent also points out that it has been incorporated under its name, the first word of which is "Samet" since 1995. In addition, Dr. Samet has also established another company, Samet Foundation Inc. to undertake various charitable purposes.

Dr. Samet has submitted a declaration under penalty of perjury that he had never heard of the Complainant or its trademark when he incorporated the Respondent under its current name.

Dr. Samet states that he has been a pioneer in online lead generation and business referrals. This has led him, amongst other things, to develop automobile buyer lead-generation websites and another business facilitating online lead generation for tax preparation software. At least some part of this business has been conducted through the Respondent although it appears the lead generation websites are operated through another entity. Dr. Samet states further that the Respondent currently provides consultancy services to various third parties.

The Respondent annexes print-outs from the Wayback Machine which show that, at least up and until, 2001, the disputed domain name did resolve to a website with some rudimentary provision for lead generation in

the automobile buying and tax software fields. The Response also includes evidence of a contract arranged in April 2021 between the Respondent and DePaul University for the Respondent to provide technology commercialisation consultancy services to the University. Taking this document at face value, it was entered into before the Complainant began contacting the Respondent about purchasing the disputed domain name.

On the record in this proceeding, the Respondent has clearly established that the circumstances specified in paragraph 4(c)(ii) of the Rules apply. "Samet" is Dr. Samet's surname and has been since birth. It is not at all surprising that he has incorporated companies, including the Respondent, under that name. When Dr. Samet did so, he denies any knowledge of the Complainant. His denial is made under penalty of perjury. In addition, it is not inherently implausible as, so far as the record in this proceeding shows, the Complainant does not appear to have begun operating in the United States until well after Dr. Samet incorporated the Respondent and, it must be borne in mind, the Complainant operates in a discrete and specialised field. The Complainant does contend it is the leading supplier of such products. That claim, however, is not supported by evidence of the kind that would be directed to establishing reputation. See e.g. [WIPO Overview 3.0](#), section 1.3 (in the context of establishing rights in an unregistered trademark). Nor does the Complainant's evidence indicate when that reputation had become so extensive it was likely to have come to Dr. Samet's attention.

Accordingly, the Panel finds the Complainant has not established the second requirement under the Policy and, therefore, the Complaint must fail.

C. Registered and Used in Bad Faith

As the Complaint must fail, no good purpose would be served by considering this requirement under the Policy.

D. Reverse Domain Name Hijacking

The Respondent contends that the Complaint has been brought in bad faith and, accordingly, the Complainant should be sanctioned by a finding of Reverse Domain Name Hijacking.

Paragraph 15(e) of the Rules provides, in part:

"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 was brought primarily 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."

Paragraph 1 of the Rules defines "Reverse Domain Name Hijacking" to be "using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name".

The fact that a Complaint has failed is not in itself sufficient to warrant a finding of Reverse Domain Name Hijacking.

In the present case, the disputed domain name does resolve to a website which is just a parking page with "related searches". There is a dispute between the parties whether these "related searches" are pay-per-click links. Clicking on them does (at least at the time of this decision) take one through to further search results and various businesses. These do appear to be the sort of links which are used to generate revenue.

The Respondent contends this has been done without its knowledge by the hosting provider and the Respondent has not received any benefit from that. As the Respondent controls the disputed domain name, however, that would not be a defence in the absence of efforts by the Respondent to preclude such use or, at least, to prevent the display of results which take advantage of a complainant's trademark. See e.g. [WIPO Overview 3.0](#), section 2.9. Given the Respondent's and Dr. Samet's claimed field of expertise, it is also rather surprising this conduct has been occurring.

Were it not for the resolution of the disputed domain name to this sort of parking page, the Panel would have had no hesitation in finding Reverse Domain Name Hijacking. See e.g. *BERNINA International AG v. Domain Administrator, Name Administration Inc. (BVI)* WIPO Case No. [D2016-1811](#) and *Reboxed Limited v. Adesoji Adeyemi* WIPO Case No. [D2021-0886](#).

First, as noted above, the Complainant has made allegations about the Respondent and the domain name <sametcpa.com>. This is not a domain name held by the Respondent. It is not a domain name in the list of at least 89 domain names the Complainant contends are held by the Respondent as evidence of it being a domainer. The Complainant has not explained why it considers this to be one of the Respondent's domain names. Moreover, as the Respondent points out, it appears to relate to an accountancy business about which the Complainant can have no proper basis for objection. The Complainant has not attempted to explain why it considers its rights in "Samet" in connection with a furniture accessories business give it rights over the use of "samet" in connection with accountancy services.

Secondly, the WhoIs record relied on by the Complainant states on its face that the registrant is "Samet & Company, Inc." The WhoIs record also states that the Administrative and Technical Contact is "Michael Samet". It was obvious therefore that the example in paragraph 4(c)(ii) of the Policy was potentially applicable. Apart from the unanswered emails and the resolution of the disputed domain name to an obvious parking page, there is no evidence that the Complainant took any steps to ascertain if either of these were real persons or, if so, what any such searches revealed.

Thirdly, the WhoIs record also states that the disputed domain name was created in 1996. It does not follow that the current registrant has held the disputed domain name since then. However, there is nothing in the record to suggest a basis for the Complainant suspecting the Respondent was not the original registrant. The Complainant does not rely on Wayback Machine records to show there was a change in ownership. Nor despite the Complainant's use of Reverse WhoIs tools to identify other domain names held by the Respondent and/or Dr. Samet, are there any searches to suggest changes in the registrant.

Proceedings under the Policy are intended to be a cost-effective and expeditious means for resolving disputes about domain names in cases of cybersquatting. Allegations that someone has registered and used a domain name in bad faith, however, should not be made without proper investigation.

The Complainant did also attempt to communicate with the Respondent to inquire if the disputed domain name was for sale. The Complainant contends that the failure of the Respondent to reply to any of these is an indicator of the Respondent's bad faith. Where a respondent has rights or legitimate interests in a domain name, however, there can be no obligation to respond to an unsolicited email.

Taking these matters into account but given the resolution of the disputed domain name to a parking page with "related searches", it is with considerable hesitation that the Panel considers it is not appropriate in this case to find that the Complaint was brought in bad faith in an attempt at Reverse Domain Name Hijacking.

6. Decision

For the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: June 23, 2022