

ADMINISTRATIVE PANEL DECISION

EXAIR Corporation v. Privacy Service Provided by Withheld for Privacy ehf /
Jeroen Janssen
Case No. D2022-2532

1. The Parties

The Complainant is EXAIR Corporation, United States of America, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Jeroen Janssen, Sweden.

2. The Domain Name and Registrar

The disputed domain name <intellistat.net> (“Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2022. On July 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 14, 2022, 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 amended Complaint on July 15, 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 the Respondent of the Complaint, and the proceedings commenced on July 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 12, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on August 29, 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 is a United States company, incorporated in 1983, specializing in compressed air operated products for industrial purposes. On January 13, 2021, the Complainant launched sales of a specialist product known as the Intellistat Ion Air Gun and engaged in extensive publicity to promote its new product. The Complainant owns the domain name <intellistat.com>.

The Complainant is the owner of a trade mark registration in the United States for a mark consisting of the word INTELLISTAT ("INTELLISTAT Mark") (Registration No. 6,212,107, registered on December 1, 2020, for goods in class 9).

The Domain Name was registered on October 25, 2021. The Domain Name does not, and there is no evidence that it ever has, resolved to an active webpage.

5. Parties' Contentions

A. Complainant

The Complainant makes the following contentions:

- (i) that the Domain Name is confusingly similar to the Complainant's INTELLISTAT Mark;
- (ii) that the Respondent has no rights nor legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the INTELLISTAT Mark, being the owner of a trade mark registered in the United States for the INTELLISTAT Mark. The Domain Name consists of the INTELLISTAT Mark, along with the ".net" generic Top-Level-Domain ("gTLD").

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the INTELLISTAT Mark and the Respondent is not commonly known by the Domain Name. The Respondent does not use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Rather the Domain Name has never been used in any active way.

The Respondent has registered and uses the Domain Name in bad faith. Given the fame of the INTELLISTAT Mark and the nature of the Domain Name, being identical to the coined INTELLISTAT Mark, there are no plausible circumstances under which the Respondent could legitimately use the Domain Name other than in bad faith. Furthermore, the Domain Name has been set up by the Respondent in a manner that enables it to be used for emails. The Respondent is likely to use or intends to use the email addresses hosted by the Domain Name to mislead Internet users. In such circumstances, the Respondent's passive holding of the Domain Name amounts to use of the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

To prove this element, the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the INTELLISTAT Mark, having a registration for the INTELLISTAT Mark as a trade mark in the United States.

Disregarding the gTLD ".net", as a necessary technical requirement of the Domain Name, the Domain Name is identical to the INTELLISTAT Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

To succeed on this element, a complainant may make out a *prima facie* case that a respondent lacks rights or legitimate interests in the disputed domain name. If such a *prima facie* case is made out, the respondent then has the burden of demonstrating rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) 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; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the INTELLISTAT Mark or a mark similar to the INTELLISTAT Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name.

There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial use. In fact, there is no evidence of any demonstrable preparations to use the Domain Name at all.

Furthermore, noting that the Domain Name is identical to the Complainant's Mark, it carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has chosen not to respond to the Complaint and thus has failed to provide any evidence of rights and legitimate interests in the Domain Name. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant who is the owner of the trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Respondent has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The Panel finds on the balance of probabilities that the Respondent was aware of the Complainant and its reputation in the INTELLISTAT Mark at the time the Respondent registered the Domain Name. The INTELLISTAT Mark is a coined mark with no descriptive meaning. There is no obvious reason, nor has the Respondent offered an explanation, for the Respondent to register a domain name that is identical to the INTELLISTAT Mark unless there was an intention to create a likelihood of confusion between the Domain Name and the Complainant and the INTELLISTAT Mark, either through email, as the Complaint asserts, or through some other means. The registration of the Domain Name in awareness of the INTELLISTAT Mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

The Panel is prepared to infer, based on the conduct of the Respondent, including the passive holding of the Domain Name, the nature of the Domain Name itself, being identical to the INTELLISTAT Mark, the failure by the Respondent to participate in this proceeding or otherwise provide any explanation of its conduct in registering a domain name that is identical to the INTELLISTAT Mark and the lack of any apparent legitimate reason for the registration and use of the Domain Name, that the Domain Name is being used in bad faith.

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith under 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 Domain Name, <intellistat.net>, be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: September 5, 2022