

ADMINISTRATIVE PANEL DECISION

Starbucks Corporation v. Salim Shaik
Case No. D2022-3439

1. The Parties

The Complainant is Starbucks Corporation, United States of America, represented by Focal PLLC, United States of America (“United States”).

The Respondent is Salim Shaik, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <starbuckspartner-hours.com> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 16, 2022. On September 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 16, 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 (Domain Administrator, Privacyguardian.org), and contact information in the Complaint. The Center sent an email communication to the Complainant on September 19, 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 September 20, 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 September 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 18, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on October 21, 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, Starbucks Corporation, is an American multinational chain of coffeehouses headquartered in Seattle, Washington.

The Complainant is the owner of numerous trademarks consisting of or including the sign STARBUCKS and covering a wide variety of goods and services, such as the following:

- STARBUCKS, United States word mark registered with the United States Patent and Trademark Office (“USPTO”) on June 23, 1987, under number 1444549 in classes 35 and 43; and

- United States figurative mark depicted below and registered with the USPTO on April 19, 2005, under number 2942903 in class 36:



The Disputed Domain Name was registered on April 20, 2022 and resolves to a website which appears to promote an app and related portal.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to a trademark in which it claims to have rights. The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent was well aware of the Complainant's mark when it registered the Disputed Domain Name and there is no evidence to support an argument that the Respondent has been commonly known by the Disputed Domain Name. The Complainant claims it never authorized the Respondent to use the STARBUCKS trademark in any domain name. In the Complainant's view, evidence of the Respondent's commercial use of the Disputed Domain Name refutes any possible claim of a legitimate noncommercial or fair use of the Disputed Domain Name. According to the Complainant, even if the Respondent used the Disputed Domain Name for a different purpose in the future, the fact remains that the Complainant has no control over how the Respondent may use the Disputed Domain Name. Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent was well aware of the Complainant's mark when it registered the Disputed Domain Name and as the Disputed Domain Name is so obviously connected with the Complainant, its very use by a registrant with no connection to the Complainant suggests opportunistic bad faith. Moreover, the Complainant claims that even if the Respondent derives no immediate commercial benefit, it is still taking unfair advantage of the reputation of the Complainant's mark to divert Internet users to his website through confusion.

B. Respondent

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

6. Discussion and Findings

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

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. The standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (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.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's STARBUCKS trademarks have been registered and used in numerous countries in connection to the Complainant's coffeehouse business and related goods and services.

The Disputed Domain Name incorporates the Complainant's STARBUCKS trademark in its entirety, simply adding the term "partner", a hyphen and the term "hours". Where the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms would not prevent a finding of confusing similarity under the first element (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel finds that the addition of a hyphen and the two terms mentioned above does not prevent the Complainant's STARBUCKS trademark from being recognizable within the Disputed Domain Name.

Additionally, it is well established that the generic Top-Level Domain ("gTLD"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's STARBUCKS trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel observes that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights (there being no Response or evidence of any such rights). According to the information provided by the Registrar, the Respondent is named “Salim Shaik”. The Panel finds that the fact that the organization name corresponds to the Disputed Domain Name is not sufficient to show that the Respondent is commonly known by this name (see section 2.3 of the [WIPO Overview 3.0](#)). There are no indications that a connection between the Complainant and the Respondent exists.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant’s STARBUCKS trademark in its entirety and adds the descriptive terms “partner” and “hours”. The Panel finds that these terms can be linked to the Complainant’s business as it may refer to the Complainant’s partners and (opening) hours of the Complainant’s stores. Moreover, according to the Complainant, “Starbucks Partner Hours” is an official app of the Complainant. In the Panel’s view, the Disputed Domain Name carries a risk of implied affiliation with the Complainant.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

The Complainant provides evidence showing that the Disputed Domain Name resolves to a website purporting to promote an online app and related portal. The Panel observes that the website not only mentions the Complainant’s STARBUCKS mark numerous times, but also includes the Complainant’s siren logo which is part of the Complainant’s figurative mark as depicted above under section 4. The evidence also shows that the website linked to the Disputed Domain Name includes third party advertisement, links to an official app and login portal of the Complainant, and a contact form.

In the Panel’s view, the Respondent’s use of the Complainant’s mark and logo creates a misleading impression of affiliation and does not amount to a fair use of the Disputed Domain Name. The Panel finds that the content of the site suggests that it may be used as a phishing scheme that uses the Complainant’s STARBUCKS mark to lure users into submitting sensitive information.

The Panel is also of the opinion that the Respondent may earn click through revenue with the advertising links embedded in the website linked to the Disputed Domain Name. Given the prominent use of the Complainant’s mark, the Panel finds that the use of the Disputed Domain Name does not amount to a *bona fide* offering of goods or services.

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and,

for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exhaustive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 website or location or of a product or service on the website or location.

In the present case, the Panel finds it inconceivable that the Respondent was unaware of the Complainant and its rights in the STARBUCKS mark when it registered the Disputed Domain Name:

- some of the Complainant's STARBUCKS marks predate the registration of the Disputed Domain Name by more than 35 years;
- the Disputed Domain Name includes the Complainant's well-known and distinctive word mark in its entirety, and possibly corresponds to the name of an official app of the Complainant;
- the website linked to the Disputed Domain Name mentions the Complainant's well-known and distinctive word mark and even uses the Complainant's logo displayed in the exact same way as on the Complainant's official website;
- the website linked to the Disputed Domain Name directly refers to the Complainant and its online app and portal.

As a result, the Respondent must have had knowledge of the Complainant's rights at the time of registering the Disputed Domain Name. The Panel finds that the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#), where it was held that the respondent acted in bad faith when registering the disputed domain name, because widespread and long-standing advertising and marketing of goods and services under the trade marks in question, the inclusion of the entire trade mark in the domain name, and the similarity of products implied by addition of a telecommunications services suffix suggested knowledge of the complainant's rights in the trade marks).

Given that the use of a domain name for *per se* illegitimate activity such as impersonation/passing off can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

The Respondent uses the inherently misleading Disputed Domain Name to resolve to a website which appears to promote an online app and related portal. As mentioned above, this website mentions the Complainant's trademark and logo, and includes advertising links to third party websites. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is shown that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last 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 <starbuckspartner-hours.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: November 4, 2022