

ADMINISTRATIVE PANEL DECISION

Seekins Precision, Inc. v. Domain Administrator, See PrivacyGuardian.org /
CEO, RESTRO ENGOH
Case No. D2022-3562

1. The Parties

Complainant is Seekins Precision, Inc., United States of America (“United States”), represented by Hogaboam Law Offices, PLLC, United States.

Respondent is CEO, RESTRO ENGOH, United States.

2. The Domain Name and Registrar

The disputed domain name <seekinsprecisionusa.com> 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 26, 2022. On September 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 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 October 3, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on October 4, 2022.

The Center verified that the Complaint together with the amendment to 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 October 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 26, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on November 10, 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 is Seekins Precision, Inc., a company, originally formed as an LLC in Idaho in 2010 and converted to a general business corporation in 2021, that manufactures and sells hunting and sport firearms, parts, and accessories. Complainant offers its goods through its official “www.seekinsprecision.com” website. Complainant owns a valid and subsisting registration for the SEEKINS PRECISION UNRIVALED INNOVATION trademark in the United States (Reg. No. 5,103,337) registered on December 20, 2016, as well as a pending application in the United States for SEEKINS PRECISION (Appl. Ser. No. 97/593,759), with the earliest claimed priority dating back to May 26, 2006.

Respondent registered the disputed domain name on July 28, 2022. At the time this Complaint was filed, the disputed domain name resolved to a website that mirrored Complainant’s website.

5. Parties’ Contentions

A. Complainant

Complainant asserts ownership of the SEEKINS PRECISION UNRIVALED INNOVATION trademark in the United States (Reg. No. 5,103,337), as well as a pending application in the United States for SEEKINS PRECISION (Appl. Ser. No. 97/593,759), with the earliest priority dating back to May 26, 2006. The disputed domain name is confusingly similar to Complainant’s SEEKINS PRECISION trademark, according to Complainant, because it is identical to Complainant’s pending trademark application and common law trademark for SEEKINS PRECISION and Complainant’s website “www.seekingsprecision.com” with the addition of the term “usa”.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the lack of any distribution license or authorization between Complainant and Respondent; Respondent’s use of the disputed domain name to resolve to a webpage that mirrors Complainant’s official website to offer goods for sale identical to Complainant’s goods; and Respondent’s unauthorized use of Complainant’s website trade dress and stylized “S” logo (United States Reg. No. 5,845,019) on Respondent’s website.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: Respondent’s use of the disputed domain name to intentionally create a likelihood of confusion with Complainant’s trademark and Complainant’s official website; Respondent’s use of the disputed domain name to resolve to a webpage that mirrors Complainant’s official website and represents that the disputed domain name is associated with Complainant; Respondent’s use of the disputed domain name to offer for sale products with identical or similar names and substantially similar descriptions as Complainant’s own products; and Respondent’s unauthorized use of Complainant’s website trade dress and stylized “S” logo on Respondent’s website.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. the disputed domain name is identical or confusingly similar to a trademark 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 has been registered and is being used in bad faith.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See [WIPO Overview 3.0](#) of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

As a threshold issue, the Panel need not address Complainant's assertions regarding Complainant's common law rights or pending application for the SEEKINS PRECISION (United States Ser. No. 97/593,759) trademark. Rather, for the purposes of the first element of the Policy, the Panel need only consider Complainant's registration for the SEEKINS PRECISION UNRIVALED INNOVATION trademark (United States Reg. No. 5,103,337)

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant has submitted evidence that the SEEKINS PRECISION UNRIVALED INNOVATION trademark has been registered in the United States since December 20, 2016, with priority dating back to April 23, 2010. Thus, the Panel finds that Complainant's rights in the SEEKINS PRECISION UNRIVALED INNOVATION trademark have been established pursuant to the first element of the Policy.

The remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's SEEKINS PRECISION UNRIVALED INNOVATION trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant's SEEKINS PRECISION UNRIVALED INNOVATION trademark because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the dominant portion of the trademark is contained within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n 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..."). In regards to gTLDs, such as ".com" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

Furthermore, broader case context such as website content trading off Complainant's reputation, or a pattern of multiple respondent domain names targeting Complainant's marks, can also support a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.7. In this Complaint, the dominant elements "seekins precision" of

Complainant's SEEKINS PRECISION UNRIVALED INNOVATION stylized and design trademark are easily recognizable in the disputed domain name. Complainant's stylized and design SEEKINS PRECISION UNRIVALED INNOVATION trademark depicts the dominant elements "SEEKINS PRECISION" with a stylized "S" logo in front of crosshairs. Those same stylized elements are placed above of, and in much larger font than, the "PRECISION UNRIVALED" elements that follow below. Moreover, the disputed domain name resolved to a website identically mimicking Complainant's official website, making unauthorized use of both Complainant's stylized trademarks and logos, as well as Complainant's website trade dress.

In addition, the combination with the term "usa" does not prevent a finding of confusing similarity between Complainant's SEEKINS PRECISION UNRIVALED INNOVATION trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not prevent a finding of confusing similarity under the first element"); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) ("Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant's [ATT trademark]"); *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) ("[T]he addition of the letters 'hbg' to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark."). Indeed, the Panel concurs with Complainant that the additional term "usa" does not dispel the confusing similarity between Complainant's SEEKINS PRECISION UNRIVALED INNOVATION trademark and the disputed domain name.

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, thereby shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Whereas in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1.

It is evident that Respondent in this case, identified by the Whois data of the disputed domain name as "CEO, RESTRO ENGOH", is not commonly known by the disputed domain name or Complainant's SEEKINS PRECISION UNRIVALED INNOVATION trademark.

UDRP panels have categorically held that use of a domain name for illegal activity – including the impersonation of the complainant and other types of fraud – can never confer rights or legitimate interests on a respondent. Circumstantial evidence can additionally support a credible claim made by Complainant asserting Respondent is engaged in such illegal activity, including that Respondent has masked its identity to avoid being contactable. [WIPO Overview 3.0](#), section 2.13. To this end, the second and third elements of the Policy may be assessed together where clear *indicia* of bad faith suggests that there cannot be any Respondent rights or legitimate interests. [WIPO Overview 3.0](#), section 2.15.

In view of the foregoing, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain

name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or

ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

iv. by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

UDRP panels have categorically held that registration and use of a domain name for illegal activity - including impersonation, passing off, and other types of fraud - is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.3. Use of the disputed domain name by Respondent to pretend that it is Complainant or that it is associated with Complainant "brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows Respondent registered the domain name primarily for the purpose of disrupting the business of a competitor, namely Complainant." *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrenge*, WIPO Case No. [D2009-1017](#); see also *GEA Group Aktiengesellschaft v. J. D.*, WIPO Case No. [D2014-0357](#) (concluding that Respondent's use of the disputed domain name to disrupt the Complainant's business by using it to impersonate the Complainant for commercial gain was evidence of respondent's bad faith registration and use of the disputed domain). Circumstantial evidence can support a complainant's otherwise credible claim of illegal respondent activity, including evidence that: (i) goods are offered disproportionately below market value; (ii) goods are ordinarily only sold with Complainant's authorization; (iii) images of the goods used by a respondent suggest they are not genuine; (iv) the respondent has misappropriated copyrighted images from the complainant; (v) the goods at issue are extremely rare; (vii) the goods at issue have prompted consumer complaints; (viii) the respondent has masked its identity to avoid being contactable; and (ix) so-called "trap purchases" demonstrate illegal respondent activity. [WIPO Overview 3.0](#), section 2.13.2. As discussed above, Complainant has proffered persuasive evidence that Respondent is using the disputed domain name to: (i) redirect to a website that mirrors Complainant's official website, (ii) hold itself out to the public as being Complainant; (iii) misappropriate Complainant's trademarks, logos, copyrighted website content and website trade dress; (iv) ostensibly offer goods for sale that are identical - or highly similar - to Complainant's goods in direct competition with Complainant.

Moreover, where it appears that a respondent employs a proxy service or selects a registrar that applies default proxy services specifically to avoid being contacted by a complainant or notified of a UDRP proceeding filed against it, UDRP panels tend to find that this may additionally support an inference of bad faith. [WIPO Overview 3.0](#) section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement efforts by a legitimate complainant demonstrates bad faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct). Here, it is evident that Respondent has either intentionally employed a proxy registration service, or intentionally selected a registrar that offers default proxy registration services, to conceal its identity in conjunction with its fraudulent use of the disputed domain name.

In view of the foregoing, the Panel concludes that Complainant has established the third 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 <seekinsprecisionusa.com> be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: November 28, 2022