

ADMINISTRATIVE PANEL DECISION

Space Exploration Technologies Corp. v. Larry Smith
Case No. D2022-4388

1. The Parties

Complainant is Space Exploration Technologies Corp., United States of America (“United States”), represented by Polsinelli PC Law firm, United States.

Respondent is Larry Smith, United States, represented by Pokala Law APC, United States.

2. The Domain Name and Registrar

The disputed domain name <starlinktv.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 17, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 21, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email to Complainant on November 22, 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 November 22, 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 November 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2023. The Response was filed with the Center on January 11, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on January 17, 2023. 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.

On January 24, 2023, the Panel issued Procedural Order No. 1, which stated:

“The Panel has reviewed the Parties’ submissions to date, and orders the Parties to submit to the WIPO Arbitration and Mediation Center (the “Center”) the following on or before February 3, 2023:

1. Complainant shall provide evidence that it used the term STARLINK prior to March 6, 2019 (the date on which the disputed Domain Name was registered), given the fact that the January 2015 media coverage annexed to the Complaint makes no reference to STARLINK and even states that Complainant (SpaceX) has not yet named the satellite Internet constellation.
2. Complainant shall explain why its USPTO trademark registrations indicate an October 26, 2020, date of first use in commerce, and shall provide any specimens of use submitted with its USPTO trademark applications.
3. Complainant shall provide any other argumentation or evidence to support a finding that Respondent was aware, as of March 6, 2019, that the SpaceX venture was called STARLINK or would be called STARLINK.
4. Respondent shall provide evidence that he has several hundred customers.
5. Respondent shall explain, and provide contemporaneous evidence in support thereof, why he chose to use the term STARLINK in his business and in the Domain Name.
6. Respondent shall provide contemporaneous evidence of his use of STARLINK in his business plans.
7. Respondent shall explain why the links on his website called “Contact” and “\$ 35.00 Monthly/Subscribe” are dead links.

The Parties may respond to each other's submissions by February 10, 2023.

The Panel reserves the right to seek additional information or documentation.”

On February 3, 2023, Complainant filed a reply to Procedural Order No. 1, together with several annexes.

On February 3, 2023, Respondent filed a reply to Procedural Order No. 1, together with two annexes.

On February 10, 2023, each Party responded to the other's February 3, 2023 submissions.

4. Factual Background

Complainant, also known as “SpaceX”, was founded in 2002. According to the Complainant, SpaceX is the “leading aerospace manufacturer, space transportation, and communications company worldwide”.

Complainant alleges that, in January 2015, it announced its “satellite Internet constellation”. According to the Complaint, Complainant's “Starlink Internet service was widely publicized” in a variety of media articles. Complainant annexed to the Complaint several “representative samples” of such media coverage. None of these articles makes any mention of “Starlink”. Two of these articles state that SpaceX had not yet named its new satellite venture at that time.

On August 21, 2017, Complainant applied to the United States Patent and Trademark Office (“USPTO”) to register the STARLINK word trademark in two classes. On April 20, 2021, the USPTO granted these

registrations (Reg. Nos. 6,329,104 and 6,329,193). The registration certificates that were ultimately issued state that Complainant first used the STARLINK mark in commerce on October 26, 2020.

Complainant submitted, in response to the Panel's Procedural Order No. 1, examples of media coverage of Complainant's announcement of "Starlink" as the brand for its satellite network. For example, a September 19, 2017 *GeekWire* headline stated: "SpaceX seeks to trademark the name 'Starlink' for satellite broadband network". Similarly, a September 20, 2017 article in *ArsTechnica* reported on the USPTO application after the headline, "SpaceX's worldwide satellite broadband network may have a name: Starlink". That same day, *Geospatial World* published an article under the headline, "SpaceX trademarks the name 'Starlink' for its highly ambitious satellite internet".

Also annexed to Complainant's response to Procedural Order No. 1 are a series of media reports from February 2018 which discuss Complainant's initial launch of its satellite network and identify the network by the name "Starlink". The launch received broad publicity.

For example, the lead paragraph of a February 17, 2018 *CNBC* article stated: "SpaceX is on a collision course with the world's biggest telecom and satellite manufacturing companies, as it steps up development of its 'Starlink' network of satellites". Similarly, a February 22, 2018 *TechCrunch* article bore the headline: "SpaceX successfully launches Falcon 9 carrying Starlink demo satellites". That same day, *Space.com* ran a story under the headline, "SpaceX Launches 1st Test Satellites for Starlink Internet Constellation..." Similar articles appeared on February 22, 2018, all making reference to "Starlink" as Complainant's satellite network, in *GeekWire*, *Business Insider*, and *Space News*.

Complainant's founder and CEO in February 2018, the billionaire Elon Musk, identified the satellite network as "Starlink" on his February 21, 2018 on the Twitter social media platform (where he had roughly 19.8 million followers at the time).

Further media coverage, as reflected in materials submitted by Complainant in response to Procedural Order No. 1, occurred later in 2018. For instance, a November 15, 2018 headline in the *Washington Post* stated: "Elon Musk's SpaceX wins FCC [Federal Communications Commission] approval to put 7,000 Starlink Internet satellites into orbit."

Complainant owns the Internet domain name <starlink.com> and currently uses that domain name to host a commercial website. On October 26, 2020, Complainant first offered for sale and shipped its first STARLINK Internet kits and offered its STARLINK Internet services to consumers in the United States.

The Domain Name was registered on March 6, 2019, more than two years before Complainant's United States trademarks were registered, but subsequent to the widespread media coverage set forth above. According to the declaration submitted by Respondent in response to the Panel's Procedural Order No. 1:

"I chose the name Starlink TV for my business because my client sold me the domain name www.starlinktv.com (as he had previously purchased the domain name and I believe he was in the process of registering an LLC in Kentucky). My client decided not to enter the tv streaming space (which is very hard to enter) and he advised me that he did not have time to do so, due to his Pastoral duties. He previously purchased the domain name from Go Daddy and then transferred it to my account. I then rebuilt his site into my own and a few years later I received the present Complaint. I named my business Starlink TV because there was no need to change a perfectly good domain name, especially after the time and expense of purchasing and having a domain name transferred and the site built. At the time I purchased the domain name and began running my business, I had never heard of the name Starlink in another capacity, let alone in Complainant's capacity."

Respondent uses the Domain Name to host a commercial website where Respondent purportedly offers television streaming services to customers for approximately USD 40 per month. Respondent claims to have "several hundred customers", but offers no proof of its purported customer base beyond a spreadsheet of inconclusive value, submitted in response to Procedural Order No. 1.

Complainant alleges, “on information and belief”, that Respondent’s website is designed to “impersonate” and “spoof” Complainant, and to “scam” customers who are confused by the Domain Name into thinking that Respondent is somehow affiliated with or endorsed by Complainant. Respondent asserts that such allegations are false and unfounded.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent disputes that it had any knowledge of Complainant’s STARLINK trademark when he registered the Domain Name, since that mark was not even registered at the time and since Complainant had not used that mark in commerce at that time. Respondent also states that he was unaware of “the name Complainant intended to use for its satellite ventures” when he registered the Domain Name.

Respondent states that he was engaged in a legitimate business – selling television subscription services to customers – prior to any notice of this dispute. Respondent also states that Complainant has provided no evidence that Respondent’s website is a “scam” or is intended to “spoof” or “impersonate” Complainant.

Respondent also states that Complainant’s USPTO-registered marks for STARLINK are currently the subject of cancellation proceedings initiated in the Trademark Trial and Appeal Board (“TTAB”) by a third party, Subaru of America, Inc., who asserts that cancellation is warranted because of Subaru’s prior registered STARLINK trademark. (That TTAB proceeding is currently pending, and, in the Panel’s view, the existence and status of that proceeding are unnecessary to a disposition of this dispute under the UDRP.)

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark STARLINK through registration demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The addition of the letters “tv” does not prevent a finding of confusing similarity, since the entirety of the mark STARLINK is clearly recognizable within the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] 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 [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes, on this record and on a balance of probabilities, that Complainant has carried its burden in respect of the Domain Name. The evidence of Respondent actually operating a television streaming service is questionable, based on the paucity of contemporaneous corroborating documentation provided here.

The Panel also finds it more likely than not that Respondent, at the time he acquired the Domain Name (at some unspecified time after its original registration on March 6, 2019 and after his friend transferred it to him), was aware of Complainant's plans to launch its STARLINK network of satellites. The media coverage eventually put into evidence by Complainant was considerable. Respondent dismisses the articles as "obscure", but such cannot reasonably be said of at least two of the sources, *CNBC* and *Washington Post*. Further, a purported entrepreneur in Respondent's position is far more likely to have been aware of development in satellite technology, such that the naming of and launch of Complainant's STARLINK network would seem unlikely to have escaped Respondent's attention.

In sum, notwithstanding Respondent's denial of awareness of the budding STARLINK brand at the time he acquired the Domain Name, the Panel finds that Respondent more likely than not was aware of that brand. The Panel also concludes that offering television streaming services via the Domain Name is free-riding on the fame of Complainant's (certainly by now) well-known STARLINK trademark. Such conduct cannot be viewed as legitimate.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

- (iv) that by using the 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.

The Panel concludes, on this record and on a balance of probabilities, that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section.

Again, due to the considerable publicity surrounding Complainant's launch of the first STARLINK satellites a year before the Domain Name was registered, the Panel concludes that Respondent more likely than not knew that SpaceX had named its satellite network STARLINK when Respondent acquired the Domain Name. The Panel also concludes that selling a television streaming service – which service could reasonably be seen as within the ambit of Complainant's satellite offerings – is an attempt to capitalize on the renown of the STARLINK brand by creating the false impression in the minds of consumers that Respondent's website is somehow affiliated with Complainant.

Respondent has run afoul of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 <starlinktv.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: February 20, 2023