

## **ADMINISTRATIVE PANEL DECISION**

### **Southwest Research Institute v. Kevin Cantrell**

### **Case No. D2022-4762**

#### **1. The Parties**

Complainant is Southwest Research Institute, United States of America (“United States” or “US”), represented by Jackson Walker, LLP, United States.

Respondent is Kevin Cantrell, United States.

#### **2. The Domain Name and Registrar**

The disputed domain name <swri.info> is registered with NameCheap, Inc. (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 12, 2022. On December 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 13, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on December 19, 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 December 19, 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 December 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 18, 2023.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on February 1, 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.

#### **4. Factual Background**

Complainant, Southwest Research Institute is a nonprofit applied research and development organization based in San Antonio, Texas that provides contract research and development services for government and industrial clients. In connection with its business, Complainant uses the acronym SwRI and has secured a number of United States trademark registrations for the mark and name SWRI both as a word mark and in a stylized form (Registration Nos. 2,587,616; 2,673,838; 2,751,698; 4,658,788; 1,955,484; and 2,208,164), the earliest of which, as a word mark, issued to registration on July 2, 2002, and in stylized form on February 13, 1996. Complainant also owns a number of trademark registrations for the name and mark SOUTHWEST RESEARCH INSTITUTE. Lastly, for purposes of its business Complainant owns and uses the domain name <swri.org> for a website concerning Complainant and its activities.

Respondent registered the disputed domain name on November 9, 2022. At some point thereafter, the disputed domain name redirected to Complainant's actual website at "www.swri.org". Respondent also used the disputed domain name in connection with emails that purported to come from an actual employee of Complainant for purposes of placing what appears to be fraudulent orders for various supplies from a third party supply vendor of Complainant.

On November 28, 2022, Complainant contacted the Registrar in an attempt to stop the use of the disputed domain name. On or about December 9, 2022, the disputed domain ceased redirecting to Complainant's website and currently does not resolve to an active website or page.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant maintains that it is known to consumers throughout the United States in the market for research and development services, both by its full name and by the name and mark SWRI, on account of Complainant's activities under the SWRI and SOUTHWEST RESEARCH INSTITUTE names and marks since 1947.

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's SWRI mark as it fully consists of the SWRI mark with the non-distinguishing generic Top-Level Domain ("gTLD") extension ".info".

Complainant asserts that Respondent does not have rights or legitimate interests in the disputed domain name as Respondent (i) fully incorporated Complainant's SWRI mark in the disputed domain name and did so well after Complainant secured rights in the SWRI name and mark, (ii) does not own any trademark rights or trade names incorporating SWRI, (iii) is not commonly known by the disputed domain name, (iv) has no relationship with Complainant, and (v) has not made any *bona fide* use of the disputed domain name, but instead has used the disputed domain name as part of a fraudulent scheme to impersonate Complainant and deceive Complainant's vendors.

Lastly, Complainant argues that Respondent has registered and used the disputed domain name in bad faith as Respondent has used the disputed domain name to impersonate Complainant, and an actual employee of Complainant, in furtherance of a fraud.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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.

### A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See section 1.2.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). Complainant has provided evidence that it owns trademark registrations for and has used the SWRI mark in connections with its research and development services well before Respondent registered the disputed domain name.

With Complainant’s rights in the SWRI mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the gTLD extension such as “.info”) is identical or confusingly similar with Complainant’s mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold for satisfying this first element is low and panels have found that fully incorporating the identical mark in a disputed domain name is sufficient to meet the threshold.

In the instant proceeding, the disputed domain name is identical to Complainant’s SWRI mark as SWRI is clearly identifiable in the disputed domain name. The addition of the extension “.info” does not distinguish the disputed domain name as the name and mark SWRI is clearly visible in the disputed domain name. The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant’s SWRI mark and in showing that the disputed domain name is identical to such.

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Based on the evidence submitted the Panel can readily conclude that Respondent does not have rights or legitimate interests in the disputed domain name. Apart from the fact that Respondent has no trademark rights in, and is not known by, the SWRI name and mark, Respondent has sought to impersonate Complainant by using Complainant’s SWRI mark and logo and actual address on fake purchase orders and emails.

Moreover, Respondent has not made any legitimate noncommercial or fair use of the disputed domain name, but instead has used the disputed domain name as part of a fraudulent scheme to likely trick unsuspecting businesses into shipping supplies worth hundreds of thousands of dollars to Respondent. In

that regard, Respondent has sent emails based on the disputed domain name that appear to come from an actual employee of Complainant. Such attempts by Respondent to pass itself off as Complainant for a fraudulent scheme does not, and cannot, confer rights or legitimate interests on Respondent. See [WIPO Overview 3.0](#) at section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”).

In sum, given that Complainant has established with sufficient evidence that it owns rights in the SWRI name and mark, and given Respondent’s above noted actions and failure to file a response, the Panel concludes that Respondent does not have a right or legitimate interest in the disputed domain name and that none of the circumstances of paragraph 4(c) of the Policy are evident in this case.

### **C. Registered and Used in Bad Faith**

The Panel finds that based on the evidence submitted, Complainant has established that Respondent has registered and used the disputed domain name in bad faith pursuant to paragraph 4(b) of the Policy.

Here, Respondent has registered and used the disputed domain name to impersonate Complainant and to send emails in furtherance of a fraudulent scheme directed at Complainant’s supply vendors. Such actions constitute clear evidence of bad faith. [WIPO Overview 3.0](#) at section 3.4. The fact that Respondent has used the disputed domain name for email that purports to originate from an actual employee of Complainant in an attempt to deceive an unsuspecting vendor of Complainant, further underscores Respondent’s bad faith. See, e.g., *Flowers Foods, Inc. and Flowers Bakeries Brands, LLC v. Withheld for Privacy, Privacy service provided by Withheld for Privacy ehf / Name Redacted*, WIPO Case No. [D2021-2276](#); *Banco Bradesco S.A. v. Fernando Camacho Bohm*, WIPO Case No. [D2010-1552](#). Simply put, the evidence before the Panel, none of which is contested by Respondent, establishes that Respondent opportunistically and in bad faith registered and used the disputed domain name to profit from Complainant’s SWRI mark at the expense of Complainant.

The Panel thus finds that the third element of paragraph 4(a) of the Policy has been met by Complainant.

## **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, <swri.info>, be transferred to Complainant.

*/Georges Nahitchevansky/*

**Georges Nahitchevansky**

Sole Panelist

Date: February 15, 2023