

ADMINISTRATIVE PANEL DECISION

Otis Elevator Company v. Poner Vhi, Skylark
Case No. D2022-4925

1. The Parties

The Complainant is Otis Elevator Company, United States of America (“United States”), represented by Cantor Colburn LLP, United States.

The Respondent is Poner Vhi, Skylark, Bangladesh.

2. The Domain Names and Registrar

The disputed domain names <sigmaelevatorgroup.com>, <sigmaelevatorld.com>, and <sigmaliftprice.com> (“Domain Names”) are registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On December 23, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 the 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. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 19, 2023.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on January 25, 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.

A. Expiry of the disputed domain name <sigmaelevatorgroup.com>

On December 23, 2022, the Registrar sent an email to the Center and the Parties noting that that the Domain Names were set to expiry on January 30, February 20, and March 3, 2023 respectively.

The Registrar further informed that the Domain Names shall remain under the Registrar Lock until March 13, March 14, and April 3, 2023, respectively. The Domain Names would then slip into Redemption and would be deleted from the Registrar database and the Registrar Lock would be automatically removed.

On December 23, 2022, the Center transmitted to the Parties the information from the Registrar indicating that certain action including payment of a renewal / registration fee needs to be taken by one of the Parties to ensure that the Domain Names remain active so that the administrative procedure can continue as required under the UDRP. Moreover, the Center informed that the consequences of a lack of such an action may include the deemed withdrawal of non-renewed expired or deleted Domain Names from the Complaint, or the dismissal (at the sole discretion of a Panel to be appointed) of the Complaint in relation to these Domain Names. On February 3, 2023, the Center sent a reminder to the Parties and the Registrar regarding the expiry of the Domain Name <sigmaelevatorgroup.com> on January 30, 2023.

Pursuant to paragraph 3.7.5.7 of the ICANN Registrar Accreditation Agreement in the event that a domain which is the subject of a UDRP dispute is deleted or expires during the course of the dispute, the complainant in the UDRP dispute will have the option to renew or restore the name under the same commercial terms as the registrant. If the complainant renews or restores the name, the name will be placed in Registrar HOLD and Registrar LOCK status, the WHOIS contact information for the registrant will be removed, and the WHOIS entry will indicate that the name is subject to dispute. If the complaint is terminated, or the UDRP dispute finds against the complainant, the name will be deleted within 45 days. The registrant retains the right under the existing redemption grace period provisions to recover the name at any time during the Redemption Grace Period, and retains the right to renew the name before it is deleted.

The Panel notes that despite the Center's reminders to the Parties and Registrar as of a date of this Decision, the WHOIS database indicates January 30, 2023 as the expiration date for the Domain Name <sigmaelevatorgroup.com>. The Panel has not been informed about any action, including payment of a renewal / registration fee, which had been taken by one of the Parties to ensure that the Domain Name <sigmaelevatorgroup.com> remains active.

Thus, the Panel is left to conclude that the Domain Name <sigmaelevatorgroup.com> should be deemed to be withdrawn from the Complaint. In consequence, the term "Domain Names" will further include only the disputed domain names <sigmaelevatorld.com> and <sigmaliftprice.com>.

4. Factual Background

The Complainant is a manufacturer of elevators, escalators, moving walkways and other people moving equipment. Its products and services are currently offered in over 70 countries.

The Complainant is the owner of numerous SIGMA trademark registrations, including:

- the Bangladeshi Trademark Registration SIGMA No. 68740 registered on June 27, 2000; and
- the Chinese Trademark Registration SIGMA No. 3319879 registered on August 14, 2004.

The Complainant is also the owner of numerous domain names incorporating its SIGMA trademark, such as <sigmaelevator.com>.

The Domain Name <sigmaelevatorld.com> was registered on March 3, 2020. The Domain Name <sigmaliftprice.com> was registered on February 20, 2020.

As of the date of this Decision, as well as at the time of submitting the Complaint, the Domain Names have resolved to the websites offering the products under the SIGMA brand for sale (the "Websites").

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Names be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Names are identical or confusingly similar to the trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Names.

Third, the Complainant submits that the Domain Names were registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

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

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Names are identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid SIGMA trademark registrations. The Domain Names incorporate this trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of the terms “elevatorltd” and “liftprice” in the Domain Names does not prevent a finding of confusing similarity between the Domain Names and the Complainant’s SIGMA trademark. UDRP panels have consistently held that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms, whether descriptive, geographical, pejorative, meaningless, or otherwise, would not prevent a finding of confusing similarity under the first element. See section 1.8, [WIPO Overview 3.0](#).

The Top-Level Domain (“TLD”) “.com” in the Domain Names is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Names are confusingly similar to the Complainant’s trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Names.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it is 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.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant’s SIGMA trademark registrations predate the Respondent’s registration of the Domain Names. There is no evidence in the case record that the Complainant has licensed or otherwise permitted the Respondent to use the SIGMA trademark or to register the Domain Names incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Names.

Moreover, it results from the evidence in the record that the Respondent does not make use of the Domain Names in connection with a *bona fide* offering of goods or services, as well as it does not make a legitimate, noncommercial or fair use of the Domain Names without intent for commercial gain. On the contrary, the Domain Names are used to attract Internet users to the Websites offering the SIGMA branded products for sale without the Complainant’s authorization. In particular, the Respondent is not an authorized dealer/distributor of the Complainant’s products. Such use of the Domain Names does not confer rights or legitimate interests on the Respondent.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant’s *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Names have been registered and are being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the SIGMA trademark predate the registration of the Domain Names. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the Domain Names. This finding is supported by the content of the Websites offering the SIGMA branded products for sale and falsely suggesting that it is an official website of the Complainant or of an entity affiliated to or endorsed by the Complainant such as its official dealer/distributor. The additional words in the Domain Names "elevatorld" and "liftprice" point to the products offered by the Complainant which affirms that the Respondent's knowledge of and intention to target the Complainant and its business when registering the Domain Names. Moreover, it has been proven to the Panel's satisfaction that the Complainant's SIGMA trademark is well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of products under this trademark. In sum, the Respondent in all likelihood registered the Domain Names with the expectation of taking advantage of the reputation of the Complainant's SIGMA trademark.

Moreover, the Domain Names are used in bad faith by the Respondent to attract Internet users to the Websites offering the SIGMA branded products for sale without the Complainant's authorization. By reproducing the Complainant's SIGMA trademark in the Domain Names, as well as displaying the images of the Complainant's SIGMA branded products on the Websites, the Respondent intends to profit from the confusion created with Internet users, as it suggests association with the Complainant. In consequence, the Panel finds that the evidence in the record demonstrates that the Respondent uses the Domain Names deliberately in order to take advantage of the Complainant's reputation and to give an appearance of credibility to the Respondent's operations.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements 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 Names <sigmaelevatord.com> and <sigmaliftprice.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: February 8, 2023