

ADMINISTRATIVE PANEL DECISION

Asurion, LLC v. Jessica Benton, Flawless Moments Photography Case No. D2023-0784

1. The Parties

The Complainant is Asurion, LLC, United States of America (“United States”), represented by Adams and Reese LLP, United States.

The Respondent is Jessica Benton, Flawless Moments Photography, United States.

2. The Domain Name and Registrar

The disputed domain name <asuriontechsupport.com> is registered with FastDomain, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 21, 2023. On February 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 22, 2023, 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 ADMIN, DOMAIN PRIVACY SERVICE FBO REGISTRANT) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 23, 2023, 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 February 27, 2023.

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 March 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 22, 2023. Informal communications from the Respondent were received on March 4, March 23, and March 24, 2023. The Center notified Commencement of Panel Appointment Process to the Parties on March 23, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on March 29, 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

The Complainant offers insurance, technology, mobile phone replacement, configuration, support, IT consultation, and related products and services. It owns the trademark ASURION, which it asserts it has used since 2001, and for which it has obtained registration in a number of countries (e.g., United States Reg. No. 2698459, registered on March 18, 2003).

According to the Whois records, the disputed domain name was registered on August 12, 2022. The Respondent has used the disputed domain name to redirect to a website advertising boudoir photography and featuring intimate and erotic images of women in lingerie. The Complainant also provided evidence that the disputed domain name has an active mail exchange ("MX") record, indicating that the disputed domain name has been used for sending and receiving emails.

Prior to the proceeding, the Complainant sent cease and desist communication to the Respondent via the email address available in the Whois records. The Respondent did not respond to these communications. Following commencement of the proceeding, the Respondent sent a series of communications to the Center and to the Complainant in March 2023 wherein it denied knowledge concerning the use of the disputed domain name and expressed it "want[s] nothing to do with the domain".

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is 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 respect of the disputed domain name, and (iii) the disputed domain name has been registered and is being used in bad faith. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde*

Nast S.A. v. Voguechen, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the ASURION mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the ASURION mark in its entirety with the term “techsupport”, which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s ASURION mark. See [WIPO Overview 3.0](#), section 1.8. The ASURION mark remains sufficiently recognizable for a showing of confusing similarity under the Policy.

Accordingly, the Panel finds that the Complainant has succeeded under this first Policy element.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that it has not authorized the Respondent to use the ASURION mark in the disputed domain name and that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, or in a legitimate noncommercial or fair manner. Instead, the Respondent has used the disputed domain name to redirect to a website featuring boudoir and other erotic photography, when there is no apparent or legitimate reason for the Respondent’s selection of a domain name containing the ASURION mark and the term “techsupport”.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent’s favor.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent’s bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent “[uses] the domain name to intentionally attempt 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 a product or service on [the respondent’s] website or location”.

Because the Complainant’s ASURION mark is well known, it is implausible to believe that the Respondent was not aware of that mark when it registered the disputed domain name. Knowledge of the Complainant and its mark is also indicated by the fact that the Respondent chose to include the Complainant’s mark together with a term (“tech support”) which is a service that the Complainant is known to provide. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name.

The facts indicate that the Respondent is using the disputed domain name in bad faith, by using it to intentionally attempt to divert, for commercial gain, Internet users to a website featuring boudoir and other erotic photography. *Deutsche Lufthansa AG v. Domain Admin, Whois Privacy Corp / Ryan G Foo, PPA Media Services*, WIPO Case No. [D2015-2346](#); *Net2phone Inc. v. Dynasty System Sdn Bhd*, WIPO Case No. [D2000-0679](#). There is no plausible good faith reason to use the disputed domain name – containing the Complainant’s mark along with a term relevant to the Complainant’s business (“tech support”) – to bring Internet users to a boudoir photography website.

The lack of response by the Respondent to the Complainant's cease-and-desist communications supports a finding of bad faith. Past UDRP panels have held that failure to respond to a cease-and-desist letter may be considered a factor in finding bad faith registration and use of a domain name. See *Encyclopaedia Britannica, Inc. v. John Zuccarini and The Cupcake Patrol a/k/a Country Walk a/k/a Cupcake Party*, WIPO Case No. [D2000-0330](#).

Additionally, the Respondent did not formally reply to the Complainant's contentions.

The Panel finds that the Complainant has established this third element under 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 <asuriontechsupport.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: April 13, 2023