

ADMINISTRATIVE PANEL DECISION

Simon Property Group, L.P. v. Name Redacted, christo leo, leo
Case No. D2023-2020

1. The Parties

The Complainant is Simon Property Group, L.P., United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Name Redacted¹, christo leo, leo, Malaysia.

2. The Domain Names and Registrars

The disputed domain names <simonshop.app>, <simonshop.com> and <simonshop.org> are registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 9, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (REDACTED FOR PRIVACY, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 9, 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 May 12, 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”).

¹ This Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 6, 2023.

On June 6, 2023, the Complainant filed a supplemental filing requesting the addition of the domain name <simonshop.org>.

The Center appointed Kaya Köklü as the sole panelist in this matter on June 9, 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 July 4, 2023, the Panel issued a Procedural Order No. 1 (the "Order"), regarding the Complainant's request to add the additional disputed domain name to this proceeding and granting the Respondent for the additional disputed domain name a five day period (e.g., through July 9, 2023) to communicate whether it intended to participate to this proceeding.

4. Factual Background

The Complainant is an American real estate investment trust that invests in shopping malls, outlet centers, and community/lifestyle centers. The Complainant has a history that dates back to 1960 (Annexes 6.1 and 6.2. to the Complaint).

The Complainant is the owner of the SIMON trademark, which is, among others, registered as United States Trademark Registration Numbers 2969024 for SIMON (registered as a service trademark on July 19, 2005) covering protection for services in class 35, and 5375533 for SIMON (registered as a word and figurative trademark on January 9, 2018) covering protection for goods and services as protected in class 9, 35, 36, 37 and 41 (Annex 1 to the Complaint).

Since the late 1990's, the Complainant further owns and operates domain names, which comprise its SIMON trademark, such as <simon.com> and <shopsimon.com> (Annexes 4.2 to 4.5 to the Complaint).

The Respondents are composed of allegedly two individual registrants reportedly located in Malaysia and the United States.

The disputed domain name <simonshop.com> was registered on April 2, 2015 and updated on September 15, 2022.

The disputed domain name <simonshop.app> was registered on April 25, 2023.

The disputed domain name <simonshop.org> was just recently registered on May 12, 2023, and hence, four days after the Centers acknowledgement of receipt of the Complaint and its respective notification to the Registrar.

Until recently, all three disputed domain names resolved to virtually identical websites, prominently using the Complainant's SIMON word and figurative trademark at the masthead of the websites, offering goods within the same consumer sector in which the Complainant is active as well (Annex 3 to the Complaint and Annex 1 to the supplemental filing of the Complainant).

At the date of the Decision, none of the disputed domain names resolved to an active website anymore.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain names.

First, the Complainant requests consolidation of the Respondents, arguing that the registrants of the disputed domain names are either the same person or at least connected to one another and should be considered as the same domain name holder for the purpose of this administrative proceeding.

The Complainant is further of the opinion that the disputed domain names are confusingly similar to its SIMON trademark.

It also argues that the Respondents have no rights or legitimate interests in respect of the disputed domain names.

Finally, the Complainant is convinced that the Respondents have registered and are using the disputed domain names in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Addition of Domain Name

The Complainant has requested the addition of a domain name to the Complaint after the Complaint had been notified to the Respondents and the proceedings had formally started.

It is generally accepted, that such requests would be denied, since the addition of an additional domain name may delay the proceedings, which are expected to be carried out with due expedition. However, whenever there is sufficient indication that a respondent is trying to frustrate the proceedings, *e.g.* by registration of an additional domain name subsequent to the notification of a complaint, the subsequent addition of a domain name to pending proceedings may be reasonable and justified. See section 4.12.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In the present case, and following the issuance of the Order, the Panel believes that the subsequent addition of the disputed domain name <simonshop.org> is exceptionally admissible, as (1) the Respondent of the added disputed domain name is reportedly the same individual as the Respondent of the disputed domain name <simonshop.app> and (2) the added disputed domain name was registered only a few days after notification of the Complaint to the Registrar, obviously to frustrate the proceedings and to replace the website previously associated to the meanwhile locked disputed domain names <simonshop.com> and <simonshop.app> and to resume the activities through the newly registered disputed domain name.

In light of the above, the Panel believes it to be fair and practical, and not prejudicial to the Respondent for the added disputed domain name <simonshop.org> to be considered as part of this proceeding.

6.2. Consolidation of Respondents

As neither the Policy nor the Rules explicitly provides provisions for the consolidation of claims against multiple respondents into a single administrative proceeding, UDRP panels generally apply the principles for consolidation as set out at section 4.11 of the [WIPO Overview 3.0](#).

Section 4.11.2 of the [WIPO Overview 3.0](#) states the following: “Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.” See also, *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

In this regard, previous UDRP panels particularly considered the following aspects in determining whether consolidation is appropriate: similarities in or relevant aspects of (i) the registrants’ contact information, (ii) the content or layout of websites corresponding to the disputed domain names, (iii) whether the registrants are targeting a specific sector, and (iv) the relevant language/scripts of the disputed domain names.

In light of the criteria set out above, the Panel is convinced that all disputed domain names are under common control.

In view of the Panel, the Complainant has provided sufficient evidence that the Respondents are most likely one and the same person, or at least connected to each other. This is particularly indicated by various undisputed facts, such as that (1) one of the disputed domain names was registered with obviously stolen personal information, (2) all disputed domain names previously resolved to virtually identical websites, allegedly offering consumer goods by using the Complainant’s SIMON trademark including its official logo (Annex 3 to the Complaint and Annex 1 to the supplemental filing of the Complainant) and (3) all three disputed domain names are registered with the same Registrar.

Bearing in mind that none of the Respondents have raised any objection to the Complainant’s consolidation request, the Panel is convinced that in the present case consolidation of multiple respondents is procedurally efficient, fair, and reasonable to all Parties.

The Panel therefore, for the purpose of this decision, accepts the case to be dealt with in a consolidated Complaint and will refer, whenever appropriate, to the Respondents as “the Respondent” below.

6.3. Substantial Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant’s contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the [WIPO Overview 3.0](#).

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights in SIMON.

The Panel further finds that the disputed domain names are confusingly similar to the Complainant's SIMON trademark, as they fully incorporate the Complainant's trademark.

As stated in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within a disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. The addition of the term "shop" does not, in view of the Panel, prevent a finding of confusing similarity between the disputed domain names and the Complainant's SIMON trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain names.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production of evidence shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain names according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's SIMON trademark in a confusingly similar way within the disputed domain names. There is also no indication in the current record that the Respondent is commonly known by the disputed domain names. In the absence of a response, the Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain names.

Quite the contrary, the Respondent's prominent inclusion of the Complainant's SIMON trademark and its official trademarked logo on the website associated to the disputed domain names is in view of the Panel a direct effort to target and take advantage of the Complainant's trademark, which in any case cannot constitute a bone fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain names.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is convinced that the disputed domain names have been registered and are being used in bad faith.

At the date of registration of the disputed domain names, the Complainant's SIMON word mark was already registered and internationally used for many years, including by the official company domain names <simon.com> and <shopsimon.com>, which were both registered in the late 1990's. It is obvious to the Panel, that the disputed domain names have been deliberately chosen to target the Complainant and its business.

This finding is supported by the use of the disputed domain names, which were associated to websites which prominently used the Complainant's SIMON trademark and company logo, which in view of the Panel is compelling evidence that Internet users visiting the associated websites shall be attracted by deliberately creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of the website.

Moreover, it is obvious to the Panel that the Respondent for the disputed domain name <simonshop.com> as indicated by the Registrar (whose name is redacted for the purpose of this Decision) is obviously a victim of identity theft. In view of the Panel, the fact that this disputed domain name was registered using stolen personal information further demonstrates that the disputed domain names, which are accepted by the Panel to be under common control, were registered and are being used for illicit purposes.

Additionally, the Panel notes that the Respondent failed to submit a response to the Complainant's contentions or to at least rebut any of the Complainant's contentions, which the Panel assesses as another indication for bad faith.

The fact that the disputed domain names do currently not resolve to active websites anymore does not change the Panel's findings in this respect. See section 3.3 of the [WIPO Overview 3.0](#).

Rather, the Panel is convinced that this is a typical cybersquatting case, which the UDRP was designed to stop.

The Panel concludes that the disputed domain names were registered and are being used in bad faith and that the Complainant consequently has also satisfied the third element of the Policy, namely, 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 disputed domain names <simonshop.app>, <simonshop.com>, and <simonshop.org> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: June 23, 2023