

## **ADMINISTRATIVE PANEL DECISION**

The Southern Company v. Eric Palmer, southern co, Abbvie Mark, and Mark Parsons

Case No. D2023-2380

### **1. The Parties**

The Complainant is The Southern Company, United States of America (“United States”), represented by Microsoft Corporation, United States.

The Respondents are Eric Palmer, southern co, United States, Abbvie Mark, United States, and Mark Parsons, United States.

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

The disputed domain names <southernccorp.com>, <southerncompanyproject.com>, and <southernco.com> are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 1, 2023.<sup>1</sup> On June 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 5, 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 June 9, 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”).

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<sup>1</sup> The Complaint was originally filed involving the disputed domain names and another domain name which was removed in the amended Complaint.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondents of the Complaint, and the proceedings commenced on June 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on July 7, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on July 12, 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 is a publicly traded energy company serving millions of customers through its operating subsidiaries. It owns the mark SOUTHERN COMPANY and enjoys the benefit of the following registrations of that mark in the United States:

- 2,163,676 (registered June 9, 1998)
- 2,174,589 (registered July 21, 1998)
- 2,174,591 (registered July 21, 1998)
- 2,174,593 (registered July 21, 1998)
- 2,176,397 (registered July 28, 1998)

According to the WhoIs records, the disputed domain names were registered on the following dates:

<southernccorp.com>: June 10, 2022

<southern0.com>: February 14, 2023

<southerncompanyproject.com>: March 13, 2023

The Respondent does not appear to have used the disputed domain names for any active websites. The Complainant submitted screenshots showing that the disputed domain names resolve to the Registrar's parking pages, each such page displaying sponsored advertisements for third party goods and services. Additionally, the Complainant provided evidence that the Respondent has established mail exchange ("MX") records associated with each of the disputed domain names, which suggests that the disputed domain names may be used for the sending and receiving of email messages.

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

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

The Complainant contends that the disputed domain names are identical or confusingly similar to the Complainant's trademarks; that the Respondents have no rights or legitimate interests in respect of the disputed domain names; and that the disputed domain names were registered and are being used in bad faith.

##### **B. Respondents**

The Respondents did not 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 names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondents have 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. The Panel finds that all three of these elements have been met in this case.

#### **A. Procedural Issue: Consolidation of Multiple Respondents**

There are three named Respondents (three underlying registrants disclosed by the Registrar) — one for each of the disputed domain names. The Complainant requests that all three be consolidated into this matter.

Paragraph 10(e) of the Rules states that a “[p]anel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules”. Paragraph 10(c) of the Rules provides, in relevant part, that “the [p]anel shall ensure that the administrative proceeding takes place with due expedition”. Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) summarizes the consensus view of UDRP panels on the consolidation of multiple respondents and provides that where a complaint is filed against multiple respondents, panels consider whether the domain names or corresponding websites are subject to common control, and whether the consolidation would be fair and equitable to all parties.

The record indicates that the disputed domain names are under common control. All three of the disputed domain names target the Complainant’s trademark or a variation of the Complainant’s trademark and were registered using the same privacy service of the same Registrar. Two of the disputed domain names were registered within a month of one another (February and March 2023) and the other one was registered less than a year prior (June 2022). The three disputed domain names all use the same primary name server, all resolve to the Registrar’s parking pages, and MX Records have been established for all the disputed domain names. Further, based on the Complainant’s evidence, the Respondents appear to have used false contact details to register the disputed domain names, which has not been rebutted by the Respondents.

The Respondents have not presented any arguments as to why consolidation would be unfair or inequitable. The Panel does not see any basis in the record to conclude that consolidation would not be fair and equitable to the Parties. Accordingly, conditions for proper consolidation of the disputed domain names into one matter are present here. The Respondents are hereinafter referred to as “the Respondent”.

#### **B. Identical or Confusingly Similar**

This first element functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name. *Id.* 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 SOUTHERN COMPANY mark by providing evidence of its trademark registrations.

The second part of the test under this element typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. In some cases, such assessment may also entail a more holistic aural or phonetic comparison of the complainant’s trademark and the disputed domain name to ascertain confusing similarity. *Id.*

Guided by these principles, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s SOUTHERN COMPANY trademark. Each of the disputed domain names retains the appearance and connotation of the Complainant’s SOUTHERN COMPANY mark, and such mark remains recognizable in each of the disputed domain names for a showing of confusing similarity under the Policy.

The disputed domain name <southernccorp.com> is confusingly similar to the trademark SOUTHERN COMPANY as it almost incorporates the entirety of the trademark, using the common abbreviation “co” for company, together with “corp” which is often used as an abbreviation for “corporation”.

The disputed domain name <southernco.com> is confusingly similar to the trademark SOUTHERN COMPANY because it employs the deceptive tactic of replacing the letter “o” with the numeral “0” and thereby uses “c0” which is a common abbreviation for “company”.

As for the disputed domain name <southerncompanyproject.com>, the inclusion of the SOUTHERN COMPANY mark in its entirety is sufficient to support a finding of confusing similarity. The presence of the word “project” within the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s SOUTHERN COMPANY mark. See [WIPO Overview 3.0](#), section 1.8.

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

### **C. 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 names. 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).

On this point, the Complainant asserts, among other things, that: (1) the Respondent has not made any use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to any of them in connection with a *bona fide* offering of goods or services, (2) the Respondent cannot demonstrate that the Respondent has legitimately been known commonly by any of the disputed domain names, (3) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names without intent for commercial gain to misleadingly divert consumers, and (4) the Complainant has never authorized the Respondent to use its name or marks, including in any domain name.

Instead, the Complainant posits that it is likely that the Respondent is using the disputed domain names for fraudulent purposes. The Complainant asserts that the establishment of MX records for the disputed domain names is consistent with patterns commonly used in fraudulent purchase schemes.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondents have not presented evidence to overcome this *prima facie* showing. Nothing in the record otherwise tilts the balance in the Respondent’s favor, also noting the disputed domain names all resolve to the Registrar’s parking pages, displaying sponsored advertisements for third party goods and services.

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

### **D. 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 SOUTHERN COMPANY mark is well known and enjoys the benefits of prior registration, the Panel finds it likely that the Respondent was aware of the mark when it registered the

disputed domain names. In the circumstances of this case, without the benefit of any explanation whatsoever from the Respondent as to a possible good faith registration and use of the disputed domain names, such a showing is sufficient to establish bad faith registration of the disputed domain names.

The circumstances also demonstrate bad faith use of the disputed domain names. Where a disputed domain name is “so obviously connected with such a well-known name and products...its very use by someone with no connection with the products suggests opportunistic bad faith”. See *Parfums Christian Dior v. Javier Garcia Quintas*, WIPO Case No. [D2000-0226](#).

Furthermore, by using the disputed domain names for displaying sponsored advertisements for third party goods and services on the related websites, the Respondent has intentionally attempted to attract and divert Internet users, for commercial gain, through creating a likelihood of confusion with the Complainant’s mark.

The Respondent’s bad faith is also evidenced by its establishment of MX records with the disputed domain names, suggesting the disputed domain names could be used to send fraudulent emails. See *Carrier Corporation v. DNS Admin, Domain Privacy LTD*, WIPO Case No. [D2021-3728](#) (“if the Respondent is using the disputed domain name to send fraudulent emails – which the MX records suggest is at least a possibility – then bad faith use is further obvious”).

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 names <southernccorp.com>, <southerncompanyproject.com>, and <southerncc0.com> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: July 26, 2023