

ADMINISTRATIVE PANEL DECISION

Subsea 7 Limited v. James Huntley

Case No. D2023-2481

1. The Parties

The Complainant is Subsea 7 Limited, United Kingdom, represented by Keltie LLP, United Kingdom.

The Respondent is James Huntley, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <subsea7as.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2023. On June 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 8, 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 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 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 3, 2023.

The Center appointed Michael D. Cover as the sole panelist in this matter on July 6, 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 the proprietor of registered trademarks for SUBSEA 7 in Classes 7, 37, 39 and 42 in the United Kingdom, the European Union, and Canada (the “SUBSEA 7 trademarks”), the earliest of which is the registration in the United Kingdom, which dates from 2006 and copies of the registration certificates are annexed to the Complaint as Annex 2 (Registration No. UK00002304950, covering “Pipe laying machines and apparatus; robotic machines and robotic tooling systems; controls therefor, and parts and fittings for all the aforesaid goods” in Class 7; “Diving and underwater engineering services; diving and underwater engineering services for the inspection, construction, maintenance and repair of offshore drilling rigs, platforms, underwater pipelines and other offshore apparatus” in Class 37; “Rental and leasing of ships; rental and leasing of pipe laying ships” in Class 39; and “Engineering consultancy services” in Class 42). There are a considerable number of other trademark registrations owned by the Complainant for SUBSEA 7 and SUBSEA 7 (logo), as also set out in Annex 2 to the Complaint. The Complainant transacts a considerable volume of business by reference to its SUBSEA 7 trademarks, including in the United Kingdom.

The Disputed Domain Name was registered on July 7, 2022. The Disputed Domain Name directs to an inactive webpage and a screenshot thereof is attached to the Complaint as Annex 3.

The Disputed Domain Name has been used to facilitate emails to certain law firms in the United States of America, which purport to emanate from the chief executive officer (“CEO”) of the Complainant, as set out in Annexes 5 and 6 to the Complaint.

5. Parties’ Contentions

A. Complainant

Identical or Confusingly Similar

The Complainant states that the Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights.

The Complainant notes that the Disputed Domain Name takes in the Complainant’s SUBSEA 7 trademark in its entirety and submits that the Disputed Domain Name is virtually identical. The Complainant continues that the additional word “as” is a descriptive term and does not distinguish the Disputed Domain Name from the Complainant’s right, as that word is a standard abbreviation for the Norwegian for a stock-based limited company or “societe anonyme”, a public limited company in France and Luxembourg. Indeed, says the Complainant, the Complainant has a societe anonyme company within its organization structure, named Subsea 7 S.A. The Complainant adds that, for the purpose of assessing confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the Top-Level Domain (“TLD”).

Rights or Legitimate Interests

The Complainant states that, so far as it is aware, the Respondent does not own any registered rights in any trademarks which comprise part or all of the Disputed Domain Name. The Complainant continues that the term “subsea 7” is not descriptive in any way nor does the combination of word and numeral have any generic, dictionary meaning. The Complainant states that it has not given its consent for the Respondent to use its registered trademark in the registration of the Disputed Domain Name.

The Complainant continues that, to the best of the Complainant’s knowledge, the Respondent is not commonly-known as “Subsea7” or “Subsea7as”. The Complainant notes that, as the Disputed Domain Name directs to an inactive webpage, there is no evidence that the Respondent has made demonstrable preparations to the use the Disputed Domain Name for legitimate purposes nor is there any evidence that the Respondent is using the Disputed Domain Name in connection with a *bona fide* offering of goods and services.

The Complainant submits that it suspects that it is only a matter of time before the Disputed Domain Name is used in connection with a commercial offering and that, as a result, the Complainant struggles to think of any uses of the Disputed Domain Name that would not take unfair advantage of the Complainant's rights for commercial gain. The Complainant submits that the Complainant's reputation in its global portfolio of SUBSEA 7 trademarks is such that Internet users would inevitably view the Disputed Domain Name and mistakenly associate its content with the Complainant.

The Complainant submits that its trademark is well known in the relevant industry and no other individual or business owns trademark rights (whether registered or unregistered) in the SUBSEA 7 trademark. The Complainant cites in support *Subsea 7 Limited v. Andrew Thomasson*, WIPO Case No. [D2018-1253](#), in which the panel held that the Complainant's trademarks are well known. The Complainant continues that it is thus highly likely that the Respondent was aware of the Complainant's rights prior to acquiring or registering the Disputed Domain Name and that it is inevitable that visitors to the Disputed Domain Name would mistakenly believe that the Respondent is the Complainant's company or a subsidiary entity associated with the Complainant.

The Complainant concludes that it has submitted a *prima facie* case showing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant states that, whilst the burden of proof lies on the Complainant, that burden is a shifting one, such that it now falls on the Respondent to rebut the Complainant's *prima facie* showing. In the absence of a response or assertion that any such right or interest exists, says the Complainant, this must lead to a presumption that the Respondent is unable to show that such right or interest exists.

Registered and Used in Bad Faith

The Complainant notes that the Disputed Domain Name directs to an inactive webpage and is being held passively by the Respondent. The Complainant submits that the Disputed Domain Name could not be passively held by anyone other than the trademark holder and that passive use by other parties would be registration and use in bad faith, insofar as the Disputed Domain Name is being used as blocking registration, preventing the Complainant from using the Disputed Domain Name for legitimate commercial purposes. The Complainant submits the inactive webpage could suggest that the Respondent was making preparations to use the Disputed Domain Name commercially and that there would be a serious threat posed by continued ownership of the Disputed Domain Name.

The Complainant moves on to address paragraph 4(b) of the Policy, stating that the Policy lists a number of circumstances without limitation, which says the Complainant, if found by the Panel to be present, shall be evidence of the registration and use of the Disputed Domain Name in bad faith.

The Complainant submits that various circumstances are relevant to a finding of use and registration in bad faith. These are that the Complainant has registered its SUBSEA 7 trademarks in many countries around the world, the Complainant transacts an enormous volume of business with reference to those trademarks, including the United Kingdom, where the Respondent appears to be based and that the Complainant has received considerable publicity by reference to its corporate name over the years. The other factors cited by the Complainant include that previous UDRP panels have found that there can be a finding of registration and use in bad faith where there is passive use of a widely-known trademark in a domain name, where there is no response and no explanation as to why the use could be in good faith. The Complainant also references what it describes as the malicious phishing campaign involving the impersonation emails sent to certain law firms in the United States of America apparently by the CEO of the Complainant.

In the absence of a response from the Respondent, the Complainant submits that, on the balance of probability, the Respondent has registered and used the Disputed Domain Name of bad faith.

The Remedy requested by the Complainant

The Complainant requests that the Panel order that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

The Complainant must establish on the balance of probabilities that the Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights; that the Respondent has no rights or legitimate interests in the Disputed Domain Name; and that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established registered rights in its trademark SUBSEA7.

The Complainant has also established that the Disputed Domain Name is confusingly similar to its SUBSEA 7 trademark, in which it has rights. The Disputed Domain Name contains the Complainant's trademark SUBSEA 7 in its entirety. It is well established that the addition of other terms does not prevent a finding of confusing similarity. 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. The nature of such additional term(s) may however bear on assessment of the second and third elements. See section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In this case, the term "as" does not prevent the Complainant's trademark SUBSEA 7 from being recognizable within the Disputed Domain Name. It is also well established that the TLD, here ".com", is to be disregarded in assessing the confusing similarity, as this is a technical requirement of registration of a domain name.

The Panel therefore decides that the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and that the provisions of paragraph 4(a)(ii) of the Policy have been met.

The Panel accepts that the Respondent has not been authorized, licensed or otherwise permitted by the Complainant to register or use the Complainant's trademark as part of the Disputed Domain Name or otherwise.

The Complainant has established a *prime facie* case, to which no response has been filed, that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not, before any notice to the Respondent of the dispute, made use or demonstrable preparations to use the Disputed Domain Name or a name corresponding to it in connection with a *bona fide* offering of goods or services nor has the Respondent been commonly known by the Disputed Domain Name nor has the Respondent made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue. The use that has taken place of the Disputed Domain Name, as already set out, involves the Disputed Domain Name resolving to an inactive website and being used to impersonate the CEO of the Complainant. Panels have categorically held that the use of a domain name for illegal activity (e.g., phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See section 2.13 of [WIPO Overview 3.0](#).

C. Registered and Used in Bad Faith

The Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. It is a reasonable inference that the Respondent knew of the Complainant and its well-known SUBSEA 7 trademark at the time when the Respondent registered the Disputed Domain Name and that the Respondent can have had no reason to register the Disputed Domain Name other than for the significance of the SUBSEA 7 element, which is entirely reproduced in the Disputed Domain Name.

With regard to the use of the Disputed Domain Name, this has been used to resolve to an inactive website and also in a phishing exercise. See section 3.4 of [WIPO Overview 3.0](#). In addition, the Respondent has failed to use the opportunity to file a Response to the Complaint and, in particular, to file any evidence of good faith use and had sought to conceal the identity of the Respondent.

The Panel accordingly finds that the Respondent has registered and is using the Disputed Domain Name in bad faith and that the provision of the Policy, paragraph 4(a)(iii) been met.

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, <subsea7as.com> be transferred to the Complainant.

/Michael D. Cover/

Michael D. Cover

Sole Panelist

Date: July 11, 2023