

ADMINISTRATIVE PANEL DECISION

D. E. Shaw & Co., Inc. v. George Escandon

Case No. D2023-2566

1. The Parties

The Complainant is D. E. Shaw & Co., Inc., United States of America, represented by Fross Zelnick Lehrman & Zissu, PC, United States of America.

The Respondent is George Escandon, United States of America.

2. The Domain Name and Registrar

The disputed domain name <de-shaw.com> 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 14, 2023. On June 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 16, 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 July 21, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the 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 July 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2023. The Respondent did not submit a response. Accordingly, the Center notified the Respondent’s default on August 22, 2023.

The Center appointed Joseph Simone as the sole panelist in this matter on August 29, 2023. The Panel finds that it was properly constituted. The Panel 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, D. E. SHAW & CO., INC. founded in 1988, is a global investment and technology development firm with more than USD 60 billion in managed assets and more than 2,000 employees worldwide.

The Complainant has an extensive global portfolio of trade marks comprising the mark D.E. SHAW, including the following:

- European Union Trade Mark Registration No. 3957222 for D. E. SHAW in Classes 9, 36 and 42 registered on October 6, 2005;
- China Trade Mark Registration No. 6049078 for D.E. SHAW in Class 36 registered on March 7, 2010;
- China Trade Mark Registration No. 6049076 for D.E. SHAW in Class 36 registered on March 7, 2010; and
- Hong Kong, China, Trade Mark Registration No. 300848007 for D.E. SHAW in Class 36 registered on April 10, 2007.

The disputed domain name <de-shaw.com> was registered on April 13, 2023.

The Complainant's evidence indicates that at the time of filing of the Complaint, the disputed domain name had been used to send fraudulent emails.

5. Parties' Contentions

A. Complainant

The Complainant asserts that it has prior rights in the D.E. SHAW trade mark and that it has acquired a strong reputation in its field of business.

The Complainant further notes that the disputed domain name registered by the Respondent is confusingly similar to the Complainant's D.E. SHAW trade mark.

The Complainant asserts that it has not authorized the Respondent to use its D.E. SHAW mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant has presented evidence showing that the disputed domain name was used for fraudulent purposes. Specifically, the evidence shows that email addresses associated with the disputed domain name were used to send emails to the Complainant's vendors, attempting to divert payment on an invoice for services rendered. Based on this evidence, it is implausible that the Respondent registered and used the disputed domain name in good faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the D.E. SHAW trade mark.

Disregarding the generic Top-Level Domain ("gTLD") ".com", the disputed domain name incorporates the Complainant's trade mark D.E. SHAW in its entirety, simply adding a hyphen between DE and SHAW.

Where the relevant trade mark 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 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the D.E. SHAW trade mark and in showing that the disputed domain name is identical or confusingly similar to its mark.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case has been established, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and the Panel has not been provided with any evidence suggesting that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

As such, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has failed to demonstrate that prior to the notice of the dispute, he or she had used or made preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Furthermore, the Panel has not been provided with any evidence showing that the Respondent is commonly known by the disputed domain name or that the Respondent is making legitimate noncommercial or fair use of the disputed domain name.

Furthermore, considering the composition of the disputed domain name <de-shaw.com>, which solely includes the Complainant's trade mark in its entirety, this disputed domain name carries a risk of implied affiliation. Such implied affiliation cannot be deemed as fair use. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, and based on the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

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

For the reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the D.E. SHAW trade mark was already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name. Furthermore, based on the use of the disputed domain name, it can be reasonably inferred that the Respondent was aware of the Complainant and intentionally targeted the Complainant when registering the disputed domain name.

The above factors, coupled with the evidence of email-based probing to the Complainant's vendors, demonstrate a clear intention on the part of the Respondent to target the Complainant at the time of registration of the disputed domain name (*Intesa Sanpaolo S.p.A. v. Intesasanpaolo*, WIPO Case No. [D2009-1550](#)).

As for bad faith use, it is well accepted that use of a domain name to perpetuate fraud constitutes bad faith use ([WIPO Overview 3.0](#) at section 3.4). The Complainant's evidence establishes that the disputed domain name has been used for email-based fraud.

In light of the foregoing facts, the Panel concludes there are no plausible reasons to suggest the Respondent registered and is using the disputed domain name in good faith and constitutes bad faith under paragraph 4(b)(iv) 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 name, <de-shaw.com> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: September 11, 2023