

ADMINISTRATIVE PANEL DECISION

Simon Property Group, L.P. v. Jessica Jersey
Case No. D2023-2945

1. The Parties

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

The Respondent is Jessica Jersey, United States.

2. The Domain Name and Registrar

The disputed domain name <simongiftcard.live> (the “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 July 10, 2023. On July 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 11, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name 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 July 17, 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 20, 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 July 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2023. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent's default on August 25, 2023.

The Center appointed Gordon Arnold as the sole panelist in this matter on September 8, 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 following facts that are relevant to the decision are uncontested:

- The Complainant is a United States real estate investment trust that operates shopping malls, outlet centers, and lifestyle centers.
- In 2005, the Complainant registered the trademark SIMON GIFTCARD (United States Trademark Registration No. 2935861 registered on March 29, 2005). Subsequently, through 2018 the Complainant registered five more trademarks using the word "simon", including combined trademark for SIMON, United States Trademark Registration No. 5375533, registered on January 9, 2018.
- In 2022, the Domain Name was registered.
- On the website to which the Domain Name resolves, the Respondent features the Complainant's logo subject to the above United States Registration No. 5375533 and multiple references to "simon gift card" and invites the users to enter their personal details to check "simon gift card balance."

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the Complainant's trademarks, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Domain Name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant must prove that:

- a) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- b) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- c) the Domain Name has been registered and is being used in bad faith.

The burden of proof is on the Complainant, and the Respondent's failure to submit a response is not, by itself, an admission that the complainant's claims are true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. However, panels have drawn inferences in light of, for example: "where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent." *Id.*

A. Identical or Confusingly Similar

The Complainant submitted uncontested documentary evidence in support of its allegations that it owns registrations for SIMON GIFTCARD (US Trademark Reg. No. 2935861 of 2005) along with other registrations using the word SIMON. The Panel finds that the Domain Name is identical to the Complainant's 2005 SIMON GIFTCARD trademark registration.

Based on the above, there are no plausible conclusions besides: (1) the Complainant has rights in the marks provided in the uncontested documents and (2) the Domain Name is identical to the SIMON GIFTCARD trademark.

Accordingly, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

There is no evidence in the record that the Respondent had or has rights or legitimate interests in the Domain Name.

There is sufficient evidence in the uncontested documents from the Complainant that the Respondent has no legitimate interests in the Domain Name. This includes the large number of registrations that are uncontested by the Respondent, the identical nature of the Complainant's trademark and the Domain Name, the Respondent's use of privacy services, the resolution of the Domain Name to a web page including the Complainants' logo, and the failure of the Respondent to file a response. The Panel notes that the composition of the Domain Name incorporating the Complainant's SIMON GIFTCARD trademark, coupled with the use of the Domain Name to resolve to a website in which the Respondent seemingly impersonates the Complainant, affirms the Respondent's intention of taking unfair advantage of the likelihood of confusion between the Domain Name and the Complainant.

It is *prima facie* obvious that, if the Respondent had evidence of legitimate interests, the Respondent would have submitted evidence to that effect or challenged the Complainant's evidence.

The preceding combination of considerations leaves no plausible conclusion apparent, other than the Respondent has no rights or legitimate interests in the Domain Name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As noted by section 3.1 of [WIPO Overview 3.0](#), the Complainant's burden to show the Respondent's bad faith may be carried by a showing of the following factors (among others):

- the respondent's likely knowledge of the complainant's rights,
- the distinctiveness of the complainant's mark,

- website content targeting the complainant's trademark, and
- failure of a respondent to present a credible evidence-backed rationale for registering the Domain Name.

Here, all are present.

First, the Respondent's use of the Complainant's logo and offering of services related to the Complainant's business shows a likely knowledge of the Complainant's rights. The only evidence of record is that the Respondent used the Complainant's registered logo since the Respondent registered the Domain Name. Further, the Complainant submitted extensive evidence of the Complainant's own use before the Respondent's registration of the Domain Name. This included trademark use on web pages addressed through the Complainant's domain names that used "simongiftcard" in ".com", ".biz", ".info", and ".mobi" generic Top-Level Domains. The only plausible conclusion is that the Respondent likely had knowledge of the Complainant's rights.

Second, a review of the Complainant's marks and their registrations, which require a mark to be distinctive, shows that the Complainant's marks are distinctive.

Third, in the absence of any evidence to the contrary, the following make the only plausible conclusion to be that the Complainant's trademark rights are being targeted: (1) the Respondent's use of the Complainant's logo on the Respondent's website and (2) the Domain Name being identical to at least one of the Complainant's marks.

Fourth, the Respondent failed to offer any legitimate rationale for registering the Domain Name.

Accordingly, the Complainant has satisfied 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 Domain Name, <simongiftcard.live>, be transferred to the Complainant.

/Gordon Arnold/

Gordon Arnold

Sole Panelist

Date: September 22, 2023