

ADMINISTRATIVE PANEL DECISION

Asurion, LLC v. sike ha
Case No. D2023-3446

1. The Parties

Complainant is Asurion, LLC, United States of America ("United States" or "U.S."), represented by Adams and Reese LLP, United States.

Respondent is sike ha, United States.

2. The Domain Name and Registrar

The disputed domain name <asurlon.net> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 11, 2023. On August 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 14, 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 Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on August 16, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 16, 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 Respondent of the Complaint, and the proceedings commenced on August 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 7, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on September 11, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on September 13, 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 appear from the Complaint and its attached Annexes, which have not been contested by Respondent, and which provide evidence sufficient to support:

Since 2001, Complainant has provided insurance, technology, mobile phone replacement, configuration, technical support, IT consultation, and related products and services under the trademark ASURION (the "ASURION Mark"). Complainant's services are made available by retailers worldwide, including some of the largest retailers in the United States and has 14 locations in North and South America, two locations in Europe, two locations in Australia, and ten locations in Asia, including China, Japan, Israel, Malaysia, the Philippines, Singapore, and Thailand.

Complainant asserts that the ASURION Mark is protected by Complainant as a registered trademark in numerous countries worldwide for its insurance and mobile phone replacement related products and services, including the following registrations of record with the United States Patent and Trademark Office ("USPTO"), for which copies of the respective registration certificates are shown in an Annex attached to the Complaint:

USPTO Trademark Registration No. 2698459, registered March 18, 2003, USPTO Trademark Registration No. 4179272, registered July 24, 2012, and USPTO Trademark Registration No. 4314110, registered April 2, 2013.

Complainant owns numerous domain names incorporating the ASURION Mark including its principal domain name, <asurion.com>, through which consumers access Complainant's official website (the "Official ASURION Website"), which website receives over 7.9 million visits annually, as well as Complainant's website accessed through <phoneclaim.com> (which also prominently displays the ASURION mark) receives approximately 40 million visitors per year.

The disputed domain name was created on August 9, 2023. On that date, several of Complainant's employees reported receiving a text message prompting them to visit Respondent's website accessed through the disputed domain name, which as of the filing of the initial Complaint displayed a login page bearing Complainant's official logo. Upon visiting Respondent's website, Complainant's employees were asked to enter their employee login information as shown in copies of the text received by each of Complainant's employees in the respective annex to the Complaint. Complainant also shows in annexes attached to the Complaint screenshots of active MX records for Respondent's website, indicating that the disputed domain name could be used for sending fraudulent emails for phishing.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain name.

Notably, Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's trademark because the predominant portion of its internationally famous Mark is incorporated in its entirety substituting the letter "i" in the ASURION Mark with the letter "I", a common misspelling of Complainant's ASURION Mark, so the public, Complainant's customers and its employees could easily

mistake the disputed domain name to refer to its official domain name, <asurion.com> used for the Official ASURION Website; that Respondent has no rights or legitimate interests in respect of the disputed domain name which was registered and is being used for illegal activity in bad faith because it has been used to configure and further a fraudulent smishing scheme sending texts to Complainant's employees to obtain their personal and employee login information; Respondent's disputed domain name creates a false association with Complainant incorporating the ASURION Mark to make employees believe texts sent by Respondent from the disputed domain name are legitimate correspondence from Complainant.

B. Respondent

The Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The *onus* is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Complainant's ASURION Mark is incorporated in its entirety except for Respondent's substitution of the letter "i" with the letter "l" to configure the disputed domain name in a manner easily overlooked by unsuspecting consumers and essentially identical to Complainant's registered ASURION Mark, followed only by the Top-Level Domain ("TLD") ".net". Prior UDRP panels have found the TLD, being viewed as a standard registration requirement, may typically be disregarded under the paragraph 4(a)(i) analysis. See, [WIPO Overview 3.0](#), section 1.11.1; see also *L'Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#).

Notably, Complainant also contends that the disputed domain name must be considered confusingly similar to Complainant's Mark because the substituted "l" for "i" reconfiguration noted above is a purposeful misspelling of Complainant's ASURION Mark and Complainant's Mark remains recognizable within the disputed domain name. Prior panels have held that a deliberate misspelling of a trademark registered as a domain name, which is intended to confuse Internet users, must be confusingly similar by design. See [WIPO Overview 3.0](#), section 1.9; See also *Milliman, Inc. v. Above.com Domain Privacy / Transure Enterprise Ltd*, WIPO Case No. [D2016-1937](#); *Sanofi, Genzyme Corporation v. Domain Privacy*, WIPO Case No. [D2016-1193](#).

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in the disputed domain name. Complainant contends that none of the circumstances provided in paragraph 4(c) of the Policy for demonstrating a respondent's rights to and legitimate interests in a domain name are present in this case.

First, Complainant asserts that Respondent is not sponsored by or affiliated with Complainant in any way, nor has Complainant given Respondent permission or license to use Complainant's trademarks in any manner, including in domain names. Prior UDRP panels have held "in the absence of any license or permission from Complainant to use its trademark, no actual or contemplated *bona fide* or legitimate use of the Disputed Domain Name could reasonably be claimed". *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#).

Second, Complainant contends Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests under Policy paragraph 4(c)(ii). Complainant has shown in the Registrar's registrant data submitted to the Center that Respondent, as registrant of the disputed domain name, identified as "sike ha" is not commonly known by the disputed domain name because it clearly bears no resemblance to it, nor to the ASURION Mark or Complainant's official <asurion.com> domain name.

Prior UDRP panels have held where no evidence, including the Whois record for the disputed domain name, suggests that Respondent is commonly known by the disputed domain name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of Policy paragraph 4(c)(ii). See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#).

Most importantly, Complainant's evidence shows as of the date of the original Complaint, Respondent was using the disputed domain name in furtherance of a specific type of phishing attack, namely "smishing," in which Respondent sent text messages to Complainant's employees prompting them to visit the website at

the disputed domain name where the employees would then be asked to enter their employee login data. Complainant also shows the MX records for the disputed domain name indicate that Respondent may also be using it for sending fraudulent emails.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. See *Valero Energy Corporation and Valero Marketing and Supply Company v. Valero Energy*, WIPO Case No. [D2017-0075](#).

Complainant's evidence submitted clearly shows the false pretense that the disputed domain name creates, that Respondent is somehow affiliated with Complainant. Further, Complainant shows with email evidence in the Annexes to its Complaint, that Respondent's use of the disputed domain name is for the illegitimate purpose of furthering a "smishing" scheme in which Respondent sent text messages to Complainant's employees prompting them to visit the website at the disputed domain name, where the employees would then be asked to enter their employee login information, as well as possibly an additional phishing email scheme given the MX records configuration for Respondent's disputed domain name. See, *Swiss Re Ltd v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1549](#); *The Commissioners for HM Revenue and Customs v. George Hill*, WIPO Case No. [D2020-0454](#). The Panel finds the foregoing conduct constitutes the illegal activity referenced above that can never confer rights or legitimate interests on a respondent.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

First, given the fame and international reputation attributed to Complainant and its ASURION Mark, and the fact that the ASURION Mark is a coined and highly distinctive term associated with Complainant, it is not plausible that Respondent could have been unaware of Complainant at the time it created the disputed domain name. See, e.g., *Asurion, LLC v. Super Privacy Service LTD c/o Dynadot*, WIPO Case No. [D2019-2326](#); *Asurion, LLC v. Cindy Willis*, WIPO Case No. [D2018-2643](#); *Asurion, LLC v. ORM Ltd/Contact Privacy Inc. d/b/a ContactPrivacy.com*, WIPO Case No. [D2016-0578](#). Based on the foregoing, the Panel finds Respondent had actual knowledge of Complainant evidenced by the registration and use of the disputed domain name in furtherance of a smishing attack targeting Complainant and Complainant's employees, directing those employees and others to a phishing website that displayed Complainant's official logo, constitutes registration and use of the disputed domain name in bad faith.

Second Respondent's use of the disputed domain name in furtherance of an unlawful smishing scheme to gain access to Complainant's secure system through confusing its employees to divulge their confidential login pass codes is *per se* illegal activity which constitutes clear bad faith use by Respondent.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name

constitutes bad faith under the Policy and the Panel finds the third element of the Policy has been established.

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, <asurlon.net>, be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: October 6, 2023