

ADMINISTRATIVE PANEL DECISION

Simon Property Group, L.P. v. leo, christo leo, KOK SEONG CHONG
Case No. D2023-3470

1. The Parties

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

The Respondents are leo, christo leo, and Kok Seong Chong, Malaysia.

2. The Domain Names and Registrar

The disputed domain name <simonshop.co> is registered with GoDaddy.com, LLC (the “Registrar 1”). The disputed domain name <simonshop.life> is registered with NameSilo, LLC (the “Registrar 2”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2023. On August 17, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On August 17, 2023, the Registrar 1 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. On August 18, 2023, the Registrar 2 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, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 31, 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 September 4, 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 Respondents of the Complaint, and the proceedings commenced on September 5, 2023. In accordance with the Rules,

paragraph 5, the due date for Response was September 25, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on October 3, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on October 9, 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 an American real estate investment trust that invests in shopping malls, outlet centers, and community/lifestyle centers. Headquartered in Indianapolis, Indiana, the Complainant is the largest mall operator in the United States. The Complainant also owns and operates premium outlets and lifestyle centers, as well as its international properties comprising approximately 191 million square feet.

The Complainant has locations in the United States (37 states and Puerto Rico), Europe, and Asia.

With more than 23,274 specialty shops across its portfolio, tenants in the Complainant's United States portfolio generate annual retail sales of more than USD 63 billion from 3 billion annual customers. In 2021, the Complainant reported USD 5.1 billion in consolidated revenue and USD 2.25 billion in net income. The Complainant has been listed on the New York stock exchange since 1993.

The Complainant has received numerous recognitions and accolades in its field.

The Complainant is the owner of trademark registrations across various jurisdictions for the mark SIMON, such as the following:

- the United States trademark registration number 2969024 for the word SIMON, filed on March 30, 2000, registered on July 19, 2005, covering services in Nice class 35; and
- the United States trademark registration number 5375533 for the word SIMON, stylized and with device, filed on January 23, 2014, and registered on January 9, 2018, covering goods and services in Nice classes 9, 35, 36, 37, and 41.

The Complainant owns numerous domain names reflecting its trademark, such as <simon.com> registered on August 21, 1997 (the main website), <shopsimon.com> registered on February 24, 1999, <shopsimon.app>, registered on May 8, 2018 and <shopsimon.info>, registered on August 25, 2001.

The disputed domain name <simonshop.co> was registered on July 19, 2023, and the disputed domain name <simonshop.life> was registered on April 25, 2023.

At the time of filing the Complaint, the disputed domain name <simonshop.life> was used to redirect users to the website "www.simonshop.co" which hosts a third party website that offers goods within the same sector as those offered by the Complainant, while prominently displaying the Complainant's trademark SIMON logo at the masthead of the website. Furthermore, on the website under the disputed domain names there are copyrighted videos and a quote credited to a representative of the Complainant; information in the footer of the website featuring a name and contact address of a co-venturer partner of the Complainant.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain names are confusingly similar to its internationally known trademark SIMON together with the descriptive term “online”, a term closely related to the Complainant’s services, in particular that the Complainant invests in shopping malls; that the Respondent has no rights or legitimate interests in the disputed domain names; and that the Respondent registered and is using the disputed domain names in bad faith for websites providing similar goods to that which are offered in the Complainant’s stores and using the Complainant’s logo and copyrighted materials by attempting to pass itself off as being connected to the Complainant’s SIMON brand. Such use also constitutes a disruption of the Complainant’s business and qualifies as bad faith registration and use.

B. Respondents

The Respondents did not reply to the Complainant’s contentions.

6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Preliminary Procedural Issue. Consolidation of Multiple Disputed Domain Names and Respondents

According to the provisions of paragraph 10(e) of the Rules, the Panel has the power to decide the consolidation of multiple domain names disputes. Further, paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In the present case, there are two disputed domain names, two sets of registrant details, and two Registrars.

The present disputed domain names: (i) are used to either resolve or redirect to the same website, “www.simonshop.co”; (ii) were created in an identical manner, reproducing the Complainant’s trademark SIMON followed by the additional word “shop”; (iii) use the same email service providers [...]@proton.me and [...]@protonemail.com; and (iv) sit on the same name servers.

The Respondents had the opportunity to comment on the consolidation request made by the Complainant but they chose to remain silent.

For the above, the Panel finds that the disputed domain names are registered by the same person or are under common control, and would be equitable and procedurally efficient to decide the consolidation of multiple disputed domain names and Respondents in the present procedure. See also section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Accordingly, hereinafter the Panel will refer to the singular “Respondent”.

B. 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 the Complainant's trademark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the 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.

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

While the addition of other term here, "shop", may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the 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.

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

Furthermore, the composition of the disputed domain names carry a risk of implied affiliation. The disputed domain names resolve to the same website impersonating the Complainant, marketing similar goods, and displaying the Complainant's trademark and logo without any consent or approval or statement clarifying such. 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.

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

D. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the disputed domain names were registered in bad faith, with knowledge of the Complainant and its trademark particularly because they incorporate the Complainant's distinctive trademark registered since at least 2005, together with a descriptive term, "shop". Also, the disputed domain names are very similar to the Complainant's domain names, such as <shopsimon.com>, registered since 1999. Furthermore, the use of the disputed domain names in relation to promoting similar goods and displaying the Complainant's logo corroborates this judgement.

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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain names incorporate the Complainant's trademark with an additional descriptive term, closely related to the Complainant's business, and the website operated under the disputed domain names display the Complainant's logo, copyrighted videos, and commercial partners, indeed in this Panel's view, the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain names who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

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.

Further, the Respondent failed to provide a Response to the Complainant's allegations and the physical addresses listed in the Whois were inaccurate or incomplete. Along with other circumstances in this case, such facts constitute further signs of bad faith.

Based on the available record, 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 names <simonshop.co>, and <simonshop.life> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: October 23, 2023