

ADMINISTRATIVE PANEL DECISION

Time Machine Plus LLC v. Stephanie Haas
Case No. D2023-3668

1. The Parties

Complainant is Time Machine Plus LLC, United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

Respondent is Stephanie Haas, China.

2. The Domain Name and Registrar

The disputed domain name <timemachineplus.shop> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2023. On August 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 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 (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to Complainant on September 1, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on September 4, 2023.

The Center verified that the Complaint together with the amendment to the 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 September 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 2, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on October 4, 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

Complainant is a company organized under the laws of the United States that is active as a retailer in the watch industry.

Complainant has provided evidence that it is the registered owner of the following trademark relating to its company name and brand TIMEMACHINEPLUS:

- word/device mark TIMEMACHINEPLUS, United States Patent and Trademark Office, registration number: 5140438, registration date: February 14, 2017, status: active.

Moreover, Complainant has evidenced to own since 2013 the domain name <timemachineplus.com> which resolves to Complainant's main website at "www.timemachineplus.com", promoting Complainant's retail business in the watch industry worldwide.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of China who registered the disputed domain name on June 25, 2023. By the time of rendering this Decision, the disputed domain name is not accessible. Complainant, however, has demonstrated that at some point before the filing of the Complaint, the disputed domain name resolved to a website at "www.timemachineplus.shop", which falsely appeared to offer the sale of watches, at significantly reduced prices for, or associated with, Complainant, thereby prominently displaying Complainant's TIMEMACHINEPLUS trademark. Also, Complainant has produced email correspondence sent to Complainant, evidencing that customer orders placed on the website under the disputed domain name were not processed, thus demonstrating that such website, which copied substantial parts of Complainant's official website, was fake.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

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

Notably, Complainant contends that it was founded in 2013 and has meanwhile become one of the fastest-growing e-commerce websites in the watch industry, with annual revenues of approximately USD 1.5 million.

Complainant submits that the disputed domain name is confusingly similar to Complainant's TIMEMACHINEPLUS trademark as it contains the textual component of the latter in its entirety. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has never assigned, granted, licensed, sold, transferred or in any other way authorized Respondent to register or use its TIMEMACHINEPLUS trademark in any manner, and (2) using the disputed domain name in connection with a website that falsely purports to be a website for, or otherwise associated with, Complainant, causes actual consumer confusion and misleadingly diverts consumers, which constitutes neither *bona fide* nor legitimate noncommercial or fair use of the disputed domain name.

Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) using the disputed domain name in connection with a website that falsely purports to be a website for, or otherwise associated with, Complainant, is likely fraudulent and indicates an intent to deceive or, at a minimum, act in bad faith with the intent for commercial gain, and (2) such use is also clearly creating a likelihood of confusion with Complainant's TIMEMACHINEPLUS trademark and, thus, constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

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 TIMEMACHINEPLUS trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[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. While the Complainant's trademark consists of design elements, it is widely-accepted that design elements are incapable of representation in domain names and as such, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element where such design elements do not overtake the textual elements in prominence. [WIPO Overview 3.0](#), section 1.10. Here, the Panel finds that the textual elements (*i.e.*, TIMEMACHINEPLUS) are not overtaken in prominence by the design elements (a hand holding a watch).

Also, the Panel finds the entirety of Complainant's TIMEMACHINEPLUS trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to this trademark 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.

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.

In particular, 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. In this context, this Panel has noticed that the website under the disputed domain name not only falsely appeared to offer the sale of watches at significantly reduced prices for, or associated with, Complainant, thereby prominently displaying Complainant’s TIMEMACHINEPLUS trademark, but that customer orders placed on this website were not processed, demonstrating that the website was fake. Such use of the disputed domain name may, therefore, not confer any rights or legitimate interests within the meaning of the Policy.

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

C. 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. Also, 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.

The circumstances to this case leave no doubts that Respondent was fully aware of Complainant’s rights in the TIMEMACHINEPLUS trademark when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name to run a website which falsely appeared to offer the sale of watches at significantly reduced prices for, or associated with, Complainant, thereby prominently displaying Complainant’s TIMEMACHINEPLUS trademark, while customer orders placed on this website were not processed, demonstrating that the website was fake, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant’s TIMEMACHINEPLUS trademark as to the source, sponsorship, affiliation or endorsement of Respondent’s website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel, therefore, finds the third element of the Policy has been established, too.

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, <timemachineplus.shop>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: October 17, 2023