

ADMINISTRATIVE PANEL DECISION

Silver Creek Advisory Partners LLC v. Samuel Taylor
Case No. D2023-4549

1. The Parties

Complainant is Silver Creek Advisory Partners LLC, United States of America (“United States”), represented by K&L Gates, LLP, United States.

Respondent is Samuel Taylor, United States.

2. The Domain Name and Registrar

The disputed domain name <silvercreekcapitalfund.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 2, 2023. On November 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 2, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 10, 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 November 15, 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 November 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 14, 2023.

The Center appointed Brian J. Winterfeldt as the sole panelist in this matter on January 5, 2024. 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 United States-based investment boutique management company with a main office in Seattle, Washington. Complainant offers hedge fund strategies, private credit and investment supervisory services to private investment funds, and services high net worth individuals, pension plans, corporations, and individual retirement accounts globally.

Complainant owns national and international trademark registrations for the word marks SILVERCREEK, SILVER CREEK, and SILVER CREEK CAPITAL MANAGEMENT (the SILVER CREEK Marks) covering financial investment advisory and hedge fund management services and other goods and services. Illustrative United States registrations include the following:

- SILVERCREEK – United States Reg. 3154036, registered on October 10, 2006;
- SILVER CREEK CAPITAL MANAGEMENT – United States Reg. 4595998, registered on September 2, 2014.

Complainant's SILVER CREEK Marks have been continuously used since at least 1999.

Complainant owns and operates its primary website at the domain name <silvercreekcapital.com>, which was registered on October 4, 2004.

The disputed domain name was registered on September 5, 2023. At the time of Complainant's filing, the disputed domain name resolved to a "Silver Creek Capital" website with an image of a housing property and a banner reading "SELL YOUR HOUSE AS IS – HASSLE FREE! WE CAN CLOSE WITH TENANTS!". Currently, the disputed domain name resolves to a "Coming Soon" page with the same banner.

The disputed domain name was brought to Complainant's attention after several claims by third parties complaining about spam communications from "Silver Creek Capital" in relation with the purchase of real estate properties.

5. Parties' Contentions

A. Complainant

Complainant submits that it owns registered rights in the SILVER CREEK Marks and that the disputed domain name is confusingly similar thereto. Complainant submits that the additional word "fund" is merely generic, related to the services Complainant offers, and does not eliminate the similarity between Complainant's SILVER CREEK Marks and the disputed domain name.

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name. According to Complainant, Respondent has no license or permission to use Complainant's trademarks, and Respondent does not own trademark registrations for SILVER CREEK CAPITAL or SILVER CREEK CAPITAL FUND or any corporate name or business license by the name of "Silver Creek Capital Fund". Complainant asserts that Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use, but instead in connection with a site that directly competes with Complainant, and a phishing scheme whereby Respondent impersonates Complainant and offers to purchase real estate properties.

Complainant asserts that Respondent registered and is using the disputed domain name in bad faith. According to Complainant, Respondent had or can be expected to have had prior notice of Complainant's SILVER CREEK Marks since Complainant's SILVER CREEK Marks were registered for nearly 17 years prior to Respondent's registration of the disputed domain name. Complainant alleges Respondent used the disputed domain name in bad faith by deliberately using Complainant's SILVER CREEK Marks on its resolving website to attempt to attract Internet users. Complainant contends that it became aware of the disputed domain name and resolving website after receiving multiple messages complaining of "spam" text messages and voicemails soliciting business by an individual with "Silver Creek Capital", the name used on the website to which the disputed domain name resolves.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

A respondent's default does not by itself satisfy a complainant's burden of proof and is not necessarily an admission that complainant's allegations are true. See the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. Thus, even though Respondent has failed to address Complainant's contentions, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *Vente-Privee.Com v. Tang Tang Shang, Tang Shan*, WIPO Case No. [D2021-1350](#).

A. Identical or Confusingly Similar

Ownership of a national or international trademark registration is *prima facie* evidence that the holder has the requisite rights in the registered mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence that it owns rights in the SILVER CREEK Marks through its trademark registrations referenced *supra*. Thus, Complainant has established its trademark rights.

The remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's SILVER CREEK Marks (typically disregarding the gTLD in which the domain name is registered, e.g., ".com"). It is well accepted that the first element functions primarily as a standing requirement and that the 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. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. *Id.*

Here, the disputed domain name fully incorporates the SILVER CREEK Mark and is confusingly similar to the SILVER CREEK CAPITAL MANAGEMENT Mark. The addition of the term "fund" and the gTLD ".com" to the disputed domain name, and the absence of the term "management", do not prevent a finding of confusing similarity between the disputed domain name and Complainant's SILVER CREEK Marks. See [WIPO Overview 3.0](#), sections 1.8 and 1.11.1.

The Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its trademark rights and showing that the disputed domain name is confusingly similar to Complainant's SILVER CREEK Marks.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, Complainant must make at least a *prima facie* showing that Respondent possesses no rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.1. Once Complainant makes such a *prima facie* showing, the burden of production shifts to Respondent, though the burden of proof always remains on Complainant. If Respondent fails to come forward with evidence showing rights or legitimate interests, Complainant will have sustained its burden under the second element of the UDRP.

Paragraph 4(c) of the Policy lists the ways in which Respondent may demonstrate rights or legitimate interests in the disputed domain name:

- (i) before any notice of the dispute, Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Complainant's evidence shows Respondent's use of the disputed domain name for a website under the name of "Silver Creek Capital". Respondent also appears to have contacted a number of individuals who mistook Respondent's communications for Complainant's, who then sent disgruntled voicemail and email messages to Complainant. It appears more likely than not that Respondent contacted these individuals as part of a phishing scheme, which would not evidence any legitimate noncommercial or fair use of the disputed domain name, nor any *bona fide* offering of goods or services. Instead, this amounts to use of a domain name for illegal activity (i.e., phishing, impersonation, and passing off) which can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1. Respondent's use of the disputed domain name for a website offering services competing with Complainant also does not confer rights or legitimate interests on Respondent. See [WIPO Overview 3.0](#), section 2.5.3.

The disputed domain name is confusingly similar to Complainant's SILVER CREEK Marks and identical to Complainant's own domain name <silvercreekcapital.com> but for the added term "fund", a word implying a connection to the financial services Complainant offers. This further evidences Respondent was attempting to impersonate Complainant. See [WIPO Overview 3.0](#), section 2.5.1. Respondent's impersonation of Complainant cannot be considered a *bona fide* offering of goods or services. See [WIPO Overview 3.0](#), section 2.13.1.

Complainant has provided evidence supporting their *prima facie* claim that Respondent lacks any rights or legitimate interests in the disputed domain name. Respondent, having defaulted, failed to refute Complainant's allegations. The Panel concludes that Respondent does not have any rights or legitimate interests in the disputed domain name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Bad faith occurs where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. Paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

"(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark 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) the respondent has registered the domain name in order to prevent the owner of the trademark 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) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted 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 the respondent's website or location."

Ample evidence on the record shows Respondent was aware of Complainant and its SILVER CREEK Marks and targeted them for nefarious purposes. Complainant's registrations for its SILVER CREEK Marks long predate Respondent's registration of the disputed domain name. Respondent chose to register a domain name confusingly similar to Complainant's SILVER CREEK Marks and use it in connection with a "Silver Creek Capital" website offering services competing with those offered by Complainant. Respondent also apparently used the "Silver Creek Capital" name to solicit business from individuals who left voicemails and emails complaining of the solicitations to Complainant. Respondent appears to have been engaging in a phishing scheme, masquerading as Complainant to attract business or garner sensitive personal or financial information. See [WIPO Overview 3.0](#), sections 3.1.4 and 3.4.

The Panel finds that Respondent registered and used the disputed domain name in bad faith pursuant to 4(b)(iii) and 4(b)(iv) of the Policy, and Complainant succeeds under 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 disputed domain name <silvercreekcapitalfund.com> be transferred to Complainant.

/Brian J. Winterfeldt/

Brian J. Winterfeldt

Sole Panelist

Date: January 19, 2024