

ADMINISTRATIVE PANEL DECISION

SystemForward America, Inc. v. ofir klein
Case No. D2023-4955

1. The Parties

Complainant is SystemForward America, Inc., United States of America (“United States”), represented by Don Marks, United States.

Respondent is ofir klein, United States, self-represented.

2. The Domain Name and Registrar

The disputed domain name <austinpopalock.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 14, 2023. On November 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Identity currently withheld for privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on November 30, 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 December 2, 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 December 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 24, 2023. Respondent sent email communications to the Center on December 6 and 8, 2023.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on January 4, 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, SystemForward America, Inc., is a locksmithing franchising company based in Louisiana, United States that specializes on emergency automotive locksmith services and other services for home and business security. Complainant owns and uses the mark POP-A-LOCK in connection with its services, and owns trademark registrations in the United States for its POP-A-LOCK mark. In particular, Complainant owns a registration for POPALOCK (Registration No. 4,700,978) that issued to registration on March 10, 2015, and a registration for a logo incorporating POP-A-LOCK (Registration No. 2,597,977) that issued to registration on July 23, 2002. Complainant also owns and uses the domain name <popalock.com> to provide information regarding its services and franchising opportunities.

Respondent is based in New York, United States. Respondent registered the disputed domain name on March 31, 2022. Respondent has previously used the disputed domain name in connection with a website offering various locksmith services, including automotive locksmith services. Currently, the disputed domain name does not resolve to an active website or page.

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 respondent has registered and used the disputed domain name, which is confusingly similar to Complainant's POP-A-LOCK mark, for a website that offers the identical services as those offered by Complainant, such as lockout and locksmith services. Complainant further argues that Respondent has registered and used the disputed domain name in bad faith in order to attract web users to Respondent's website for commercial gain.

B. Respondent

While Respondent did not formally reply to the Complaint, Respondent sent the Center emails after receiving the Complaint. In these email Respondent first advised that "[t]his website is closed" and then in a second asserted, inter alia, that (i) it was "doing the best we can for the website not to look like a pop-a-lock! Not in color not shape," (ii) it wanted "people who looks for a pop a lock service and not the company," and (iii) "Running a monopoly on the name 'pop a lock' is illegal."

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. 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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 that Complainant's POPALOCK and POP-A-LOCK marks are recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of the geographic location "Austin" (a city in Texas) may bear on the assessment of the second and third elements, the Panel finds the addition of such geographic location does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

Here, Respondent has used the disputed domain name for a website that essentially offers the very services that Complainant promotes under its POP-A-LOCK mark. Notably, the website posted by Respondent at the disputed domain name has even featured a logo with the name "Pop A Lock Austin" that plays upon a logo used by Complainant for its POP-A-LOCK mark. In all, the disputed domain name and associated website appear to have been designed to suggest a connection between Respondent's website and claimed services and Complainant. The use of the city name of "Austin" in the disputed domain name and on Respondent's website simply reinforces that connection by suggesting that Respondent is affiliated with, endorsed by, or even a franchisee of Complainant for POP-A-LOCK automotive locksmith and related services in Austin. Such use of the disputed domain is simply not legitimate. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, and as already noted, Respondent has registered a domain name that on its face is likely to be seen as being connected to Complainant and its POP-A-LOCK services by suggesting that the associated website is targeted to consumers in the city of Austin. Additionally, Respondent has used the disputed domain name for a website that in its totality suggests a connection to Complainant to essentially offer the same automotive locksmith and related services as those offered and promoted by Complainant. Such registration and use of the disputed domain name to attract consumers to Respondent's competing website is opportunistic and more likely than not designed to take advantage of Complainant's rights in its POP-A-LOCK mark for Respondent's profit. [WIPO Overview 3.0](#), section 3.1.1.

Based on the available record, the Panel finds that Complainant has established the third element 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, <austinpopalock.com>, be transferred to Complainant.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: January 18, 2024