

ADMINISTRATIVE PANEL DECISION

Etison LLC v. Breytan Hammons
Case No. D2023-4984

1. The Parties

The Complainant is Etison LLC, United States of America (“United States”), represented by Addison Watson, United States.

The Respondent is Breytan Hammons, United States.

2. The Domain Name and Registrar

The disputed domain name <twocommaclubsecrets.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 29, 2023. On November 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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 December 5, 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 amendment to the Complaint on December 5, 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 the Respondent of the Complaint, and the proceedings commenced on December 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2024. The Respondent did not submit any response by the deadline. Accordingly, the Center notified the Respondent’s default on January 4, 2024. After the Response due date had passed, a Response was filed with the Center on January 8, 2024, and January 10, 2024.

The Center appointed William F. Hamilton as the sole panelist in this matter on January 24, 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.

On February 7, 2024, the Panel issued Administrative Panel Procedural Order No. 1 requesting clarification regarding “ClickFunnels” identified as the Mark owner in the Complaint. On February 7, 2024, the Complainant responded to Administrative Panel Procedural Order No. 1 and stated that the Complainant conducts business as “Click Funnels.”

4. Factual Background

The Complainant assists businesses in selling their products and services online. The Complainant’s website name derives from the fact that the number 1,000,000 contains two commas.

The Complainant owns United States Patent and Trademark Office Registration No. 5,594,195 dated October 30, 2018, for the trademark TWO COMMA CLUB (the “Mark”).

The disputed domain name was registered on February 14, 2019. The disputed domain name at the time of filing of the Complaint resolves to a website that states: “Awesome Site in The Making.” The Respondent has offered to sell the disputed domain name to the Complainant for USD 45,000 through a domain name broker.

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 name. The Complainant asserts the disputed domain name is confusingly similar to the Mark because the disputed domain name is composed by adding the term “secrets” to the Mark. The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain name, and that the Respondent does not have any trademarks corresponding to . The Complainant asserts that the Respondent registered the disputed domain name to sell the disputed domain name to the Complainant at an exorbitant price.

B. Respondent

The Respondent did not substantively reply to the Complainant’s contentions. Two emails were received from the Respondent by the Center suggesting that the Respondent has been in settlement negotiations with the Complainant. The Respondent submitted an uncompleted standard response form provided by the Center as its Response.

6. Discussion and Findings

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

- (i) the disputed domain name is 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 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 the 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.

Based on the available record, the Panel finds the Complainant has shown rights in the Mark. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name, rendering the disputed domain name confusingly similar to the Mark under the Policy. [WIPO Overview 3.0](#), section 1.7. Adding the term "secrets" to the Mark in the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Mark. [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 the 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 the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise. There is no evidence that the Respondent is generally known by the disputed domain name or ever engaged in any bona fide commercial activity in connection with the disputed domain name. The Respondent's "Under Construction – Awesome Site in The Making" website notice does not establish rights or legitimate interests in the disputed domain name. The Panel notes that the Respondent has attempted to sell the disputed domain name to the Complainant for an exorbitant price.

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 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.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) does not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include:

(i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes (i) the distinctiveness of the Complainant's Mark, (ii) the confusingly similar composition of the disputed domain name with the Mark, (iii) that the disputed domain name has never resolved to an active website, and (iv) that the Respondent's offer to sell the disputed domain name to the Complainant for an exorbitant price far above the Respondent's cost of acquiring and maintaining the disputed domain name. The Panel finds that in the circumstances of this case, the passive holding of the disputed domain name does not prevent a finding of bad faith registration and use under the Policy.

Based on the available record, the Panel finds that the 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 <twocommaclubsecrets.com> be transferred to the Complainant.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: February 23, 2024