

## **ADMINISTRATIVE PANEL DECISION**

**SEEK Careers/Staffing, Inc. v. Yassin Boutwaline, Skandia-Stockholm and  
Seek Personnel Staffing LLC**  
Case No. D2024-3160

### **1. The Parties**

The Complainant is SEEK Careers/Staffing, Inc., United States of America (United States), represented by Andrus Intellectual Property Law, LLP, United States.

The Respondent is Yassin Boutwaline, Skandia-Stockholm, Belgium and Seek Personnel Staffing LLC, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <seekpersonnelstaffing.com> is registered with Tucows Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 31, 2024. On August 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 13, 2024, 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 (Seek Personnel Staffing LLC, Amber Rose Pozo and Nick Pozo) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 14, 2024, 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 August 16, 2024.

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 Respondent of the Complaint, and the proceedings commenced on August 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 8, 2024. The Respondent did not submit any formal response. On August 14, 2024, however, the Center received an email rejecting the Complaint from Amber Pozo, the

founder of Seek Personnel Staffing LLC. (referred to in section 4 below) and using an email account based on the disputed domain name. Accordingly, the Center notified the Commencement of Panel Appointment Process on September 9, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on September 16, 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**

The Complainant is a company based in the United States which has been providing staffing services for companies aiming to provide them with properly matched, qualified employees and candidates. According to the Complaint, the Complainant has been providing its services by reference to the "SEEK marks" since 1994.

Amongst other things, the Complainant provides its services from the website at "www.seekcareers.com". According to the website, the business was originally founded in 1971, becoming incorporated in 1975. It currently has 19 branch offices, with 16 located in Wisconsin in the United States and three branch offices "in the Twin Cities" (which the Panel takes to refer to Minneapolis and St Paul, Minnesota).

The Complainant owns:

- (a) United States Registered Trademark No. 3,214,735, SEEK, which has been registered since March 6, 2007 in the Principal Register in respect of employment agency services and claims a first use in commerce from December 31, 1994;
- (b) United States Registered Trademark No. 6,073,848, SEEK CAREERS/STAFFING, which has been registered since June 9, 2020 in the Principal Register in respect of employment agency services and also claims a first use in commerce from December 31, 1994; and
- (c) United States Registered Trademark No. 6,073,850, SEEK PROFESSIONALS, which has been registered since June 9, 2020 in the Principal Register in respect of employment agency services and also claims a first use in commerce from November 1, 2015.

According to the Whois record, the disputed domain name was first registered on February 17, 2021.

The disputed domain name resolves to a website which appears to offer employment agency services including "temp-to-hire", "direct hire" and "temp services". According to the website, the business operates in 10 cities, has 188 current active employees "out to work" and forecasts 238 positions to be filled per quarter.

The footer of each page and copyright notice identifies the operator of the website as SEEK Personnel Staffing LLC. The contact page gives its address as 72855 Fred Waring Dr Suite A3 in Palm Desert California in the United States.

A search of the records of the Secretary of State for California included in the Complaint discloses that a company of that name and that address was incorporated on January 30, 2024. Ms Pozo is identified the chief executive officer and member.

#### **5. Discussion and Findings**

No formal response has been filed.

In the present case, it appears that the person using the disputed domain name is different to the person identified by the Registrar as the registrant. The email received from that person does not address the substantive matters arising under the Policy. There is no information before the Panel about whether there is any relationship between the two. It is not clear, therefore, whether the person using the disputed domain name is associated with the Respondent identified by the Registrar or there has been a transfer to the current user.

The Panel agrees with the approach of the learned panel in *KwikChex Ltd v. ECC ECC, ECC / European Consumer Claims Ltd*. WIPO Case No. [D2020-0139](#) who rejected an objection to the complaint on the grounds that it did not formally name the correct respondent. In that proceeding, after reviewing a number of decisions, the panelist considered that the person identified formally as the respondent was not conclusive provided the person (or persons) who appeared to be in control of the domain name were involved in the proceeding.

In the present case, the Panel notes that the Complaint and all associated documents have been sent by the Center to the physical and electronic co-ordinates for the Respondent identified as the registrant by the Registrar. The Complaint and Written Notice have also been sent to the electronic co-ordinates for Seek Personnel Staffing LLC indicated on the website to which the disputed domain name resolves as well as other persons apparently associated with the business identified in the email received by the Center from Ms Pozo (who emailed the Center objecting informally to the Complaint on August 14, 2024). Before the Registrar verification, the Complaint was also initially filed against Seek Personnel Staffing LLC. In these circumstances, both persons potentially in control of the disputed domain name have been put on notice and some response has been elicited from Ms Pozo. As Seek Personnel Staffing LLC appears to be operating the disputed domain name, therefore, the Panel will treat it primarily as the Respondent.

The email received from Ms Pozo did not address the substantive issues arising under the Policy. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his, her or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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 has been registered and is being used in bad faith.

#### **A. Identical or Confusingly Similar**

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the Registered Trademarks identified in section 4 above, including the registered trademark SEEK.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the “.com” gTLD, the disputed domain name consists of the Complainant’s registered trademark SEEK and the terms “personnel” and “staffing”. As this requirement under the Policy is essentially a standing requirement, the addition of these term does not preclude a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name. Although that is sufficient for the purposes of the Policy, the Panel also notes that the formulation of the disputed domain name is also similar to the formulation of the Complainant’s Registered Trademark No. 6,073,848 SEEK CAREERS/STAFFING.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

## **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the 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) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a 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.

The disputed domain name was first registered well after the Complainant began using its trademark and also well after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the first Respondent's name. Nor is there any suggestion of some other name by which the first Respondent is commonly known from which the disputed domain name could be derived.

The disputed domain name could be derived from the name of the second Respondent. However, the second Respondent was not incorporated until January this year. By then, the disputed domain name had already been registered and so could not have been derived from the second Respondent's name. It is possible that Seek Personnel Staffing LLC could have been incorporated under that name without any knowledge of the Complainant or its trademarks. However, the second Respondent has not come forward claiming that or any explanation for the genesis of its name.

From the available record, neither Respondent appears to hold any trademarks for the disputed domain name.

In these circumstances, the manner of use of the disputed domain name appears to infringe the Complainant's Registered Trademarks.

These matters, taken together, are sufficient to establish a prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that prima facie case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

### **C. Registered and Used in Bad Faith**

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Group One Holdings Pte Ltd v. Steven Hafto* WIPO Case No. [D2017-0183](#).

In particular, paragraph 4(b)(iv) of the Policy provides as an illustrative example of a situation in which a domain name has been registered and used in bad faith:

“(iv) by using the domain name, a respondent has intentionally attempted to attract, for commercial gain, Internet users to respondent's website or other on-line location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of respondent's website or location or of a product on respondent's website or location.”

The second Respondent in this proceeding is plainly using the disputed domain name for commercial gain with the intention of attracting Internet users to its website. Further, that use on its face appears likely to create a likelihood of confusion with the Complainant's trademarks given the similarity of the disputed domain name to the Complainant's trademarks and the correspondence of the parties' respective services.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

In the present case, that is not at all clear. The trademark and the disputed domain name are very similar. However, the terms used are to an extent indicative of the type of services being offered although they are not wholly descriptive and, the Panel notes, the Complainant's trademarks have been registered in the Principal Register in the United States.

Further, the get-ups of the parties' respective websites are very different.

Further still, arguably, the two parties appear to operate in rather different geographic spheres, although both in the United States – being roughly 2,000 miles apart.

Those matters and the apparently limited geographic sphere in which the Complainant appears to operate and the different, but also limited sphere in which the business using the disputed domain name appears to operate raise a serious doubt whether the Respondent was aware of the Complainant and its trademark before the Complaint was filed or notice of the dispute was received.

There are cases which indicate that "intention" for the purposes of paragraph 4(b)(iv) is to be determined objectively from the consequences naturally flowing from the course of conduct. For example *Paule Ka v. Paula Korenek* WIPO Case No [D2003-0453](#). The Panel is also conscious that, in cases which concern exclusively parties in the United States, some panels have been prepared to apply the doctrine of constructive notice of the Registered Trademarks applicable under United States trademark law. See e.g., [WIPO Overview 3.0](#), section 3.2.2.

On the other hand, there are also cases involving exclusively parties located in the United States which have refused to make a finding of bad faith on presumed knowledge. For example, the panelist in *Regency Furniture of Laurel, Inc. v. David Lively* WIPO Case No [D2018-0919](#) stated:

"... A finding of bad faith registration may not be based on presumed knowledge. There must be some evidence from which the Panel can infer that Respondent was probably aware of Complainant's rights at the time of the disputed domain name registration. Complainant here offers no such evidence."

The doctrine of constructive notice applicable under United States trademark law would ordinarily lead to at least a prima facie conclusion that the disputed domain name is being used in infringement of the Complainant's registered trademark. So far as the record in this proceeding reveals, however, the Respondent appears to be operating a genuine business rather than merely opportunistically taking advantage of the Complainant's trademark.

This conduct may very well be an infringement of the Complainant's Registered Trademark but not all cases of trademark infringement necessarily fall under the Policy. To be invoked successfully, the Policy requires the Complainant to show that the Respondent has registered the disputed domain name in bad faith. The Panel is loathe to impute a finding of bad faith effectively on the basis of constructive notice. As the panelist in *Regency Furniture of Laurel, Inc. v. David Lively*, above, stated, there must be evidence from which the Panel can infer the Respondent was probably aware of the Complainant's rights and was seeking to take advantage of, or undermine, them.

While the Complainant's trademark is registered in the Principal Register and both parties appear to be providing the same or very similar services, the evidence in this case does not persuade the Panel that the Respondent likely knew of and targeted the Complainant and its trademark. There is the comparatively small scale of the parties' respective operations, their geographical separation, the very different get-ups and the nature of the trademark.

With some hesitation, therefore, the Panel finds the Complainant has not discharged its onus of showing the Respondent has registered and used the disputed domain name in bad faith.

Accordingly, the Complaint must fail.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: September 30, 2024