

ADMINISTRATIVE PANEL DECISION

Austin Industries, Inc. v. Thomas Smith
Case No. D2024-3355

1. The Parties

The Complainant is Austin Industries, Inc., United States of America (“United States”), represented by Slates Harwell LLP, United States.

The Respondent is Thomas Smith, United States.

2. The Domain Name and Registrar

The disputed domain name <austin-ind-careers.com> is registered with Squarespace Domains II LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 15, 2024. On August 16, 2024, the Center emailed the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 2024, the Registrar emailed the Center its verification response disclosing the registrant and contact information for the disputed domain name, which differed from the named Respondent (John Doe) and contact information in the Complaint. The Center sent an email to the Complainant on August 26, 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 amendment to the Complaint on August 30, 2024.

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 September 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 4, 2024.

The Center appointed William F. Hamilton as the sole panelist in this matter on October 14, 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 offers industrial and commercial building construction, road construction, general building contractor services, maintenance and repair of commercial, industrial, and manufacturing facilities and buildings, real estate development, construction project management services, and road paving services. The Complainant also owns and operates a website located at the domain name <austin-ind.com>.

The Complainant owns United States Patent and Trademark Office Registration No. 4,829,969 for the figurative trademark A (the "Mark") registered on October 13, 2015. The Mark is described as a "fanciful representation of the letter 'A' in a heptagon sitting atop a wide horizontal parallelogram."

The disputed domain name was registered on August 3, 2024. The disputed domain name resolves to a website stating, "We're under construction. Please check back for an update soon." The Respondent has sent emails and employment offer letters utilizing the Mark via the disputed domain name, impersonating the Complainant's human resources personnel and falsely offered employment positions with the Complainant.

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 consists of the Mark plus the suffix phrase "-ind-careers." The Complainant further asserts that it has common law rights in the AUSTIN word mark, recognized in previous UDRP panel decisions. The Complainant contends that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, never operated a business under the disputed domain name, has not advertised the disputed domain name, and never engaged in any bona fide commercial activity in connection with the disputed domain name. The Complainant asserts that the Respondent knew of the Mark and registered and used the disputed domain name in bad faith to disrupt the Complainant's business and confuse and phish information from unsuspecting Internet users, particularly since the Complainant uses the domain name <austin-ind.com> to conduct its business.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

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. While the letter portion of the Mark is incorporated in the disputed domain name, the Panel considers more analysis is appropriate in these circumstances. The Panel notes that prior UDRP decisions have recognized the Complainant's common law rights in the AUSTIN word mark. See *Austin Industries, Inc. v. Ajay Kumar, AJ Consultancy*, WIPO Case No. [D2023-0021](#) and *Austin Industries, Inc. v. Mike Wheeler, Douglas Wood*, WIPO Case No. [D2024-0756](#). The Panel considers that Complainant has rights in the AUSTIN word mark for the purposes of the Policy.¹ [WIPO Overview 3.0](#), section 1.3.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark because the disputed domain name incorporates the AUSTIN trademark in its entirety and merely adds the expression "-ind-careers" as a suffix. Confusing similarity may be established for the purposes of the Policy where a dominant feature of the relevant mark is recognizable in the domain name. [WIPO Overview 3.0](#), section 1.7. In this case, the Mark is clearly recognizable in the disputed domain name, notwithstanding the differences between the disputed domain name and the Mark. *Austin Industries, Inc. v. Steve Hudson*, WIPO Case No. [D2024-2099](#). Moreover, the Panel notes that the fraudulent use of the disputed domain name clearly affirms the finding of confusing similarity.

Although the addition of other terms (here, "ind-careers") may bear on the assessment of the second and third elements, the Panel finds the addition of such a term 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 Top-Level Domain ("TLD") of the disputed domain name, in this case ".com", may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1 and *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#).

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.

¹Pursuant to the Panel's powers under paragraph 10 and 12 of the Rules, the Panel researched the prior UDRP disputes involving the Complainant and the Complainant's website, which support the Complainant's contentions regarding common law trademark rights. [WIPO Overview 3.0](#), section 4.8.

The Panel finds on the evidence that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has expressly disavowed providing the Respondent with permission to use the disputed domain name or the Mark. There is no evidence that the Respondent has made a bona fide offering of goods or services under the disputed domain name or is commonly known by the disputed domain name. The Respondent has failed to provide evidence showing rights or legitimate interests in the disputed domain name.

The disputed domain name is confusingly similar to the Mark. It will likely cause Internet users to believe that the disputed domain name resolves to a website sponsored, affiliated, or owned by the Complainant. Such use of a disputed domain name, even when “under construction,” cannot establish rights or legitimate interests. Moreover, the evidence submitted by the Complainant establishes that the disputed domain name is being used to perpetuate fraud, which also can never serve to demonstrate legitimate interest or rights in the disputed domain name. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following non-exhaustive scenarios:

- (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.

Panels have held that the use of a domain name for illegal activity, such as impersonation and passing off, as is present in the case, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. On the evidence presented, the Panel finds that the Respondent implemented a scheme that prominently featured the Complainant’s AUSTIN trademark in the disputed domain name, as well as the Complainant’s Mark in the fraudulent offer letter sent out to prospective employees, designed the disputed domain name to resemble the Complainant’s actual domain name, and added the term “careers” to confuse and trick persons seeking employment with the Complainant to provide personally identifying information and other sensitive data to the Respondent. Accordingly, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy. *Austin Industries, Inc. v. Steve Hudson*, WIPO Case No. [D2024-2099](#).

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 <austin-ind-careers.com> be transferred to the Complainant.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: October 28, 2024