

## **ADMINISTRATIVE PANEL DECISION**

**Cole Schotz, P.C. v. Michael Segan, Segan LLC**  
**Case No. D2024-3519**

### **1. The Parties**

The Complainant is Cole Schotz, P.C., United States of America (“United States”), self-represented.

The Respondent is Michael Segan, Segan LLC, United States.

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

The disputed domain name <coleschotzz.com> (the “Disputed Domain Name”) is registered with Hostinger Operations, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 3, 2024. On September 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 10, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 10, 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 September 13, 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 September 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 13, 2024.

The Center appointed Lynda M. Braun as the sole panelist in this matter on October 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 nationwide law firm incorporated and headquartered in New Jersey, United States, with additional offices in New York, Delaware, Maryland, Texas and Florida. Representing hundreds of businesses, both large and small, as well as select individuals, the Complainant has provided wide-ranging legal services to various national industries for numerous years.

The Complainant owns the incontestable trademark for COLE SCHOTZ through the United States Patent and Trademark Office (“USPTO”), United States Trademark Registration No. 5,655,258, registered on January 15, 2019, with a first use in commerce of January 1, 2015, in international class 45 for legal services (hereinafter referred to as the “COLE SCHOTZ Mark”). The Complainant owns the domain name <coleschotz.com>, which resolves to its official website at “www.coleschotz.com” and which features the professionals, the services offered, and news related to Complainant.

The Disputed Domain Name was registered on March 15, 2024 and resolves to an error landing page that states, “This site can’t be reached. coleschotzz.com’s server IP address could not be found.” The Complainant claims the Respondent also used the Disputed Domain Name to perpetuate a phishing scheme in which the Respondent configured the Disputed Domain Name for email functions and used the email address incorporating the Disputed Domain Name, albeit with an additional letter “z” in the term “schotz” to impersonate the Complainant and send fraudulent emails and fabricated invoices to the Complainant’s clients, requesting payments with instructions to make payments purportedly to the Respondent’s bank account. The Complainant contends the Complainant’s clients were thus led to believe that they were interacting with genuine representatives of the Complainant. <sup>1</sup>

The Complainant did not provide evidence of the fraudulent scheme, but the Respondent has not submitted any arguments or evidence to rebut the Complainant’s allegations.

#### 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. Notably, the Complainant contends that:

- the Disputed Domain Name is confusingly similar to the Complainant’s trademark because the Disputed Domain Name contains the COLE SCHOTZ Mark in its entirety, albeit with an additional letter “z” in the term “schotz”, and then followed by the generic Top-Level Domain (“gTLD”) “.com”, and thus does not prevent a finding of confusing similarity; and
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, among other things, the Complainant has not authorized the Respondent to register a domain name containing the COLE SCHOTZ Mark, the Respondent was not making a bona fide offering of goods or services, and the Respondent has never been commonly known by the COLE SCHOTZ Mark or any similar name; and
- the Disputed Domain Name was registered and is being used in bad faith because, among other things, the Respondent used the Disputed Domain Name to pose as the Complainant and sent fraudulent emails to

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<sup>1</sup>One of the Complainant’s partners received a phishing email purportedly sent by the Respondent, and on which the partner accidentally clicked and opened, entering his login credentials. Through its phishing scheme, the Respondent was able to gather information about the Complainant and its clients and send configured emails incorporating the Disputed Domain Name with instructions for payment to the Respondent’s bank account.

numerous clients of the Complainant, requesting that they settle their outstanding debt by making payment to a bank account purportedly created by and belonging to the Respondent.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy requires that the Complainant prove the following three elements in order to prevail in this proceeding:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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**

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the COLE SCHOTZ Mark.

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

It is uncontroverted that the Complainant has established rights in the COLE SCHOTZ Mark based on its years of use as well as its registered trademark for the COLE SCHOTZ Mark in the United States. The consensus view is that registration of a mark is prima facie evidence of validity. The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the COLE SCHOTZ Mark.

The Disputed Domain Name consists of the COLE SCHOTZ Mark in its entirety, albeit misspelled by adding an additional letter "z" to the term "schotz". The misspelling of "coleschotz" to "coleschotzz" does not prevent a finding of confusing similarity to the COLE SCHOTZ Mark. See [WIPO Overview 3.0](#), section 1.9 ("A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element"); see also *Express Scripts, Inc. v. Whois Privacy Protection Service, Inc. / Domaindeals, Domain Administrator*, WIPO Case No. [D2008-1302](#). Moreover, the Panel also finds that the COLE SCHOTZ Mark is recognizable within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Finally, the addition of a gTLD such as ".com" in a domain name is a technical requirement. Thus, it is well established that, as here, such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's COLE SCHOTZ Mark.

Based on the available record, the Panel finds that 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 that 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.

In this case, given the Respondent’s lack of Response to the facts as set out above, the Panel finds that the Complainant has made out a prima facie case. The Respondent has not submitted any arguments or evidence to rebut the Complainant’s prima facie case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its COLE SCHOTZ Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c).

Further, based on the use claimed by the Complainant and made by the Respondent of the Disputed Domain Name to impersonate the Complainant and configure emails to perpetuate a phishing scheme does not confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”). See also *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name, holding that “such phishing scam cannot be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”). This is precisely what occurred here, where the Respondent allegedly sent fraudulent emails configured from the Disputed Domain Name to impersonate the Complainant and send emails and fabricated invoices to the Complainant’s clients, instructing those clients to make payment to a different bank account, presumably an account created by and belonging to the Respondent.

In sum, the Panel concludes that the Complainant has established an un rebutted prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead and defraud the Complainant’s clients by incorporating the Disputed Domain Name into fraudulent emails sent by the Respondent to those clients in the name of the Complainant. Such use cannot conceivably constitute a bona fide offering of a product or service within the meaning of paragraph 4(c)(i) of the Policy. The Panel concludes that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name.

Based on the available record, the Panel finds that 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith. The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith registration and use of the Disputed Domain Name, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having considered the Complainant's contentions, which were unrebutted by the Respondent, the Panel finds that the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy due to the Respondent's use of an email phishing scheme in which the Respondent sent fraudulent emails and fabricated invoices to the Complainant's clients, instructing that those payments be made to bank accounts controlled by the Respondent. See [WIPO Overview 3.0](#), section 3.1.4 (use of a domain name for per se illegitimate activity such as phishing or impersonation/passing off is considered evidence of bad faith). See also *Stichting BDO v. Contact Privacy Inc. Customer 7151571251 / gregory Motto*, WIPO Case No. [D2022-2023](#) (finding the phishing scheme and use of an email address incorporating the disputed domain name to fraudulently obtain payment of invoices to be evidence of bad faith pursuant to paragraph 4(b)(iv) of the Policy for intentionally misleading and confusing the public into believing that the respondent was associated and/or affiliated with the complainant). Thus, the Panel concludes that the Respondent used the Disputed Domain Name as part of an illegal scheme to defraud the Complainant's clients of significant sums of money. Such conduct demonstrates the Respondent's bad faith and is precisely the conduct that the Policy aims to proscribe.

The Panel also finds that the Respondent had actual knowledge of the Complainant and its rights in the COLE SCHOTZ Mark when registering the Disputed Domain Name, emblematic of bad faith registration and use. It strains credulity to believe that the Respondent did not know of the Complainant or its COLE SCHOTZ Mark as evidenced by the Respondent's use of the entirety of the COLE SCHOTZ Mark in the Disputed Domain Name. Thus, the Panel finds that in the present case, the Respondent had the Complainant's COLE SCHOTZ Mark in mind when registering and using the Disputed Domain Name.

Further, the Panel concludes that the Respondent's registration of the Disputed Domain Name attempted to disrupt the Complainant's business for commercial gain. See *Newegg Inc. v. Nicole Alex and Alexander Ethan*, WIPO Case No. [D2019-2740](#) (registration of disputed domain names was likely to have been made in an attempt to receive commercial gain from their exploitation). The Panel additionally finds that the Respondent's use of the Disputed Domain Name was also highly likely to confuse the Complainant's clients.

Based on the available record, the Panel finds that the third element of the Policy has been established.

## 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 <coleschotzz.com> be transferred to the Complainant.

/Lynda M. Braun/

**Lynda M. Braun**

Sole Panelist

Date: October 30, 2024