

ADMINISTRATIVE PANEL DECISION

P/F Smyril Line v. Seo Forlyfe
Case No. D2024-4240

1. The Parties

The Complainant is P/F Smyril Line, Denmark, represented by Budde Schou A/S, Denmark.

The Respondent is Seo Forlyfe, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <smyrilline.com> (the “Disputed Domain Name”) 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 October 15, 2024. On October 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 15, 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 (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 16, 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 October 21, 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 October 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 12, 2024.

The Center appointed Nick J. Gardner as the sole panelist in this matter on November 19, 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 incorporated in Denmark and based in the Faroe Islands. It has since about 1982 provided ferry and other shipping services to and from the Faroe Islands. The word “Smyril” is a native Faroe word referring to the Merlin bird. The Complainant owns a number of registered trademarks for the words “Smyril Line”. The earliest of these appears to be Danish trademark registration VR 2022 01384 registered on August 1, 2022. These trademarks are referred to as the “SMYRIL LINE trademark” in this decision.

The Complainant registered the Disputed Domain Name on August 3, 2004. It was thereafter used by the Complainant to link to the Complainant’s website promoting its business. It appears that at a date in March 2022 it was inadvertently allowed to lapse. At an unknown date thereafter the Respondent registered the Disputed Domain Name. It now redirects to a gambling website “www.railthello.com” purporting to be located in Indonesia.

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 words “Smyril Line” are only referable to the Complainant and its business. It says the Disputed Domain Name is identical or virtually identical to the SMYRIL LINE trademark. It says that the Respondent has no rights or legitimate interest in the Disputed Domain Name. It says the registration and use are in bad faith because “It must be clear that the sole purpose of using the disputed domain name is to attract Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s registered trademarks and by exploiting the fact that current and possible customers type the disputed domain name when trying to reach the Complainant’s website”.

The Complainant also says the Respondent’s name is likely fictitious being an acronym for “search engine optimisation” combined with a misspelling of the words “for life”.

B. Respondent

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

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the

Complainant, the Panel may draw appropriate inferences from the Respondent's default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the SMYRIL LINE trademark. The Panel finds the Disputed Domain Name is identical or confusingly similar to this trademark. The only difference is the omission of the space between the words SMYRIL and LINE. Spaces cannot in any event form part of a domain name for technical reasons. The Disputed Domain Name remains visually and phonetically virtually identical to the SMYRIL LINE trademark. It is well established that the generic Top-Level Domain ("gTLD"), in this case ".com", does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

It is not clear to the Panel when the Respondent registered the Disputed Domain Name. It may be that the relevant date was before August 1, 2022 which is the date of the earliest trademark registration for SMYRIL LINE. However this does not matter - the Panel agrees with the consensus approach as explained in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 1.1.3:

"1.1.3 While the UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed.:

Registration of a domain name before a complainant acquires trademark rights in a name does not prevent a finding of identity or confusing similarity under the UDRP. The UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired rights. However, in such circumstances it may be difficult to prove that the domain name was registered in bad faith under the third element of the UDRP". See below as to bad faith issues.

Accordingly the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

The Panel finds the words SMYRIL LINE are, on the evidence before the Panel, a term which is only referable to the Complainant and its business.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

"(i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent has been commonly known by the 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 domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the SMYRIL LINE trademark. The Complainant has prior rights in the SMYRIL LINE trademark which precede the Respondent's acquisition of the Disputed Domain Name. The Complainant has therefore established a prima facie case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

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

The Complainant says that “It must be clear that the sole purpose of using the disputed domain name is to attract Internet users to the Respondent 's website by creating a likelihood of confusion with the Complainant's registered trademarks and by exploiting the fact that current and possible customers type the disputed domain name when trying to reach the Complainant's website”. The Panel does not think this is a straightforward case of deceiving customers. It is clearly likely that customers looking for the Complainant's website will use the Disputed Domain Name to try to find it. However when they instead find themselves at an Asian gambling website it seems unlikely they will carry out any business there. It seems much more likely to the Panel that the linking by redirection of a domain name previously used by an established business will provide benefits to the Respondent in terms of search engine optimization, because of the way the relevant underlying algorithms assess the popularity of a given website - which may include taking account of factors associated with redirections to the website in question. The fact the Respondent's probably fictitious name includes the acronym “seo” tends to reinforce this analysis, It seems to the Panel

debatable as to whether the use of a third party's trademark (which has no meaning save in relation to that third party) for search engine optimization by way of linking or redirection is within any of the categories set out under paragraph 4(b) of the Policy. However those categories are non-exhaustive. The Respondent's conduct is in the opinion of the Panel in any event an impermissible taking unfair advantage of the goodwill of the Complainant has in the words SMYRIL LINE and as such amounts to registration and use in bad faith of the Disputed Domain Name.

The Panel does not consider that it matters that the Respondent's registration of the Disputed Domain Name may predate the earliest registration date of the SMYRIL LINE trademark. The Respondent's registration was of a lapsed domain name, and that name has no meaning of any kind save in relation to the previous registrant (the Complainant), and was clearly intended to take unfair advantage of the Complainant's then existing goodwill in the term SMYRIL LINE. The Disputed Domain Name was likely acquired because it would provide search engine optimization benefits precisely because of the characteristics the Disputed Domain Name possessed as result of the Complainant's prior use of that name. The Respondent cannot sensibly have thought the words SMYRIL LINE had any independent or useful meaning save in relation to the Complainant, and in all probability knew of the Complainant and its previous use of the Disputed Domain Name.

The Panel also notes that the Respondent has not filed a Response and hence has not availed himself of the opportunity to present any case of good faith that he might have. The Panel infers that none exists.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <smyrilline.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: December 3, 2024