

ADMINISTRATIVE PANEL DECISION

Sage Global Services Limited v. Narendra Ghimire, Deep Vision Architects

Case No. DAI2023-0010

1. The Parties

The Complainant is Sage Global Services Limited, United Kingdom, represented by Paula Barnola, Spain.

The Respondent is Narendra Ghimire, Deep Vision Architects, United States of America (“United States” or “U.S.”), represented by Greenberg & Lieberman, United States.

2. The Domain Name and Registrar

The disputed domain name <sage.ai> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 18, 2023. On May 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 19, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 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 May 26, 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 June 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2023. The Response was filed with the Center July 15, 2023. The Center appointed John Swinson, W. Scott Blackmer, and Tony Willoughby as panelists in this matter on August 18, 2023. The Panel finds that it was properly constituted. Each member of 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 August 21, 2023, the Complainant submitted an update of one of the Exhibits in the Complaint.

4. Factual Background

The Complainant is a provider of technology solutions for businesses, with a focus on software for financial management and accounting, human resources, and enterprise business processes.

The Complainant was founded in the United Kingdom in the early 1980s. The Complainant's products and services are now used by businesses in many countries.

The Complainant owns trademark registrations for SAGE, including United Kingdom Registration No. UK00001360796, filed on October 14, 1988, and registered on August 23, 1991, and United States Registration No. 2240550 that was filed on January 20, 1998 and was registered on April 20, 1999.

The Respondent is a domain name investor (and self-identifies as a "domainer") from the United States who buys and holds domain names for resale. The Respondent has been a domainer since 2013.

At one time, the disputed domain name was owned by a company called Sage Health. Apparently, Sage Health first registered the disputed domain name in 2015, and let it expire, and then re-registered the disputed domain name on December 16, 2017. The Respondent purchased the disputed domain name from Sage Health on January 8, 2018.

The disputed domain name has been used by the Respondent to host a page that lists the domain name for sale. There is no allegation or evidence that the landing page for the disputed domain name has ever been a pay-per-click page or used for any other purpose other than listing the disputed domain name for sale. The current webpage at the disputed domain name states, "This domain is available for sale!" and sets out how an interested person may obtain a price for the disputed domain name. This page is currently "powered by Afternic". (Afternic operates a domain name marketplace and provides services to assist in the buying and selling of domain names.)

The disputed domain name has been listed on the GoDaddy platform for sale requesting minimum offers, such as USD 179,888 prior to the filing of the Complaint, and USD 379,888 on August 21, 2023 after the filing of the Complaint.

The Respondent has been a respondent in two prior decisions under the Policy. The first was a three-member panel decision in *Amadeus IT Group, S.A. v. Domains By Proxy, LLC / Narendra Ghimire, Deep Vision Architects*, WIPO Case No. [DCO2022-0040](#) which involved the domain name <amadeus.co> ("the *Amadeus* case"). In a split decision, the Respondent was successful in the *Amadeus* case.

The second decision was *Virtuoso, Ltd. V. Narendra Ghimire, Deep Vision Architects*, WIPO Case No. [DIO2022-0049](#) which involved the domain name <virtuoso.io> ("the *Virtuoso* case"). The Respondent was unsuccessful in the *Virtuoso* case. The <virtuoso.io> domain name is the subject of a pending U.S. Federal Court action filed by the Respondent.

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 it is reasonable to conclude that the Respondent must have been aware of the existence of the Complainant's SAGE trademark; that the Respondent opportunistically registered the SAGE trademark in the ".ai" country-code Top-Level Domain ("ccTLD") space knowing that the

Complainant was a technology company where artificial intelligence (“AI”) is of core importance to the Complainant; and that the excessive price at which the disputed domain name is listed for sale is evidence of knowledge of the Complainant.

The Complainant provides evidence of a blog produced by the Complainant, prior to the registration of the disputed domain name, that includes blog posts about the use of AI by businesses.

B. Respondent

The Respondent contends that the Complainant has not satisfied the second or third elements required under the Policy for a transfer of the disputed domain name and requests a finding of Reverse Domain Name Hijacking.

Notably, the Respondent contends that SAGE is a well-known dictionary term and is used by 1,648 business in their registered trademarks and by 34,574 businesses as their company names; and that there is no evidence that the Respondent registered the disputed domain name primarily for the purpose of selling the disputed domain name to the Complainant.

The Respondent produces a declaration declaring under penalty of perjury that he had never heard of the Complainant prior to the filing of the Complaint.

In response to the Complainant’s contention that the Respondent opportunistically registered the SAGE trademark in the “.ai” ccTLD space knowing that the Complainant was a technology company where artificial intelligence is of core importance to the Complainant, the Respondent produces evidence to demonstrate that Sage AI associated with the Complainant was not launched until June 2023, over 5 years after the Respondent purchased the disputed domain name.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

The Complainant submitted an unsolicited supplemental filing on August 21, 2023. This filing was a webpage from the GoDaddy website that showed the offer price for the disputed domain name that, as referred to above, had changed after the Complaint was filed. Because this is new evidence that was not available at the time the Complaint was filed, the panel has considered the material that was included in the supplemental filing.

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 respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

B. Rights or Legitimate Interests

In view of the analysis below, the majority believe it to be unnecessary to consider this element.

C. Registered and Used in Bad Faith

It is well-established that 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.

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.

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 that is (usually) owned by the complainant.

The Complainant submits that the Respondent registered the disputed domain name primarily for the purpose of opportunistically selling the disputed domain name to the Complainant. The evidence does not support this claim.

Dealing in domain names in the secondary market is a legitimate trading activity. By its very nature, it is speculative. A domainer usually has the intention of reselling domain names at a price in excess of the purchase price. Some domain names sell, and some sit on the shelf unsold. Being a domainer is a risky business and is not always profitable, but trying to make a profit by reselling domain names is not bad faith *per se*.

The Respondent provided a signed declaration of Narendra Ghimire that states: "I had never heard of the Complainant prior to the filing of this Complaint. ... I bought the domain name because it is a single word generic term and believed that the domain name would appreciate in value." (The Respondent was silent as to whether he had heard of the SAGE trademark or the Complainant's products.)

It is believable that the Respondent had not heard of the Complainant. Even though the Complainant is a large and long-standing technology business, the Complainant focuses on providing software to business enterprises, and so it is not inconceivable that the Respondent had not heard of the Complainant. The Complainant provided details of its popularity in the United Kingdom, but not similar information regarding the United States where the Respondent is located. The Complainant did not provide evidence to show that its SAGE trademark is so well known that a person in the position of the Respondent must have heard of it. In summary, the Complainant has not shown with evidence why the Respondent would have known of and targeted it. *So Bold Limited v. TechOps, VirtualPoint Inc.*, WIPO Case No. [D2022-1100](#); and *Sütaş Süt Ürünleri Anonim Şirketi v. Privacy Administrator, Anonymize, Inc. / Independent Digital Artists*, WIPO Case No. [D2022-0615](#). The Respondent did not contact the Complainant to try to sell the disputed domain name to the Complainant.

The Complainant did not provide any evidence that online searches by the Respondent would have made the Respondent aware of the Complainant.

Potentially, the Complainant did not provide this evidence because the Respondent purchased the disputed domain name from a business with rights in the term “sage” (Sage Health), or because “sage” is dictionary term. (*Merryvale Limited v. Domains By Proxy, LLC., DomainsByProxy.com / Oliver Worth, Twenty Two Solutions Ltd*, WIPO Case No. [D2020-2187](#).) The Complainant is not the only “sage”.

The Complainant did not make submissions that the Respondent had an obligation to conduct trademark or online searches prior to purchasing the disputed domain name. According to the Respondent, such searches would have produced results showing that SAGE is a registered trademark of and used by other businesses. The Panel considers that this is not a case where an obligation to conduct searches should be imposed on the Respondent because “sage” is a dictionary term.

Even if the Respondent had been aware of the Complainant’s trademark rights, this knowledge would not have necessarily prevented the Respondent from acquiring the disputed domain name in good faith for its common meaning, so long as the disputed domain name is not used by the Respondent in a manner that infringes upon the Complainant’s trademark rights. Obviously, if the Respondent attempts to use the disputed domain name in relation to the Complainant or related software goods or services, the Respondent will cross the line. *Intocable, Ltd. v. Paytotake LLC*, WIPO Case No. [D2016-1048](#) (“the *Intocable* case”). In short, knowledge of the existence of a trademark is of no help to the trademark owner unless the domainer is making a use of it indicating that the trademark or its owner is being targeted.

Under these circumstances, while there is a risk that the signed declaration of Narendra Ghimire is self-serving, the Panel is not in position to reject the Respondent’s sworn evidence, even though the Complainant clearly has some degree of international reputation. On the balance of probabilities, the Panel cannot find sufficient counter-vailing evidence to conclude that the Respondent intentionally targeted Complainant and its SAGE mark when the Respondent purchased the disputed domain name from Sage Health. See the *Intocable* case; and *Displays Depot, Inc. v. GNO, Inc.*, WIPO Case No. [D2006-0445](#).

Accordingly, the Panel concludes that the Respondent did not register the disputed domain name knowing of or because of the Complainant or its trademark rights.

The Complainant asserts that the “excessive price” at which the disputed domain name was offered for sale “is, beyond any doubt, an obvious sign of bad faith on the side of the Respondent” and as a result “in all probability, the Respondent must have been aware of the renown SAGE brand and the eventual interest of the Complainant”. The Panel disagrees. The disputed domain name contains a dictionary term and is used as the name for many products, businesses, and services. The disputed domain name could also be used for its dictionary meaning. That the Complainant considers the sales price to be excessive (a matter on which the Panel is not in a position on the evidence to opine - *So Bold Limited v. TechOps, VirtualPoint Inc.*, WIPO Case No. [D2022-1100](#)) is not conclusive evidence in this case of knowledge of the Complainant or bad faith by the Respondent. In some circumstances, the price of the disputed domain name could be a factor that may suggest that, because only a business of the size of the Complainant could pay that price, that the Respondent is targeting the Complainant. If the disputed domain name truly is registered without knowledge of the Complainant and in good faith, then setting a high price once becoming aware of the Complainant is not of itself contrary to the Policy. On the other hand, setting a high price shortly after registering the disputed domain name may be evidence that in fact the respondent was targeting a trademark owner. *Caracol Primera Cadena Radial Colombiana S.A., a.k.a Caracol S.A. v. Domains By Proxy, LLC / ABCSites, Inc.*, WIPO Case No. [D2015-1598](#). In the present case, if any such inference could arise, the Respondent provided credible evidence and a signed declaration to rebut any such inference that the Respondent was not aware of the Complainant when registering the disputed domain name.

Subparagraph 4(b) of the Policy states that any of the following circumstances in particular (but without limitation) shall be evidence of the registration and use of the domain name in bad faith: “(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.”. As stated above, on the balance of probabilities, the Respondent was unaware of the Complainant and so could not have acquired the disputed domain name primarily for the purpose of selling it to the Complainant.

The Complainant also asserts that the Respondent has passively held the disputed domain name and has made no use of the disputed domain name for over 5 years, and that this passive holding constitutes bad faith under *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0030](#) (“the *Telstra* case”). The *Telstra* case is long standing but relatively narrow in operation. In that case, the complainant’s trademark was unique and one of the most famous in Australia, the complainant provided substantial evidence of its reputation in Australia, the respondent had an Australian address and was likely aware of the complainant, and the respondent used a fake name (Nuclear Marshmallows) to conceal his or her identity. In the present case, the Complainant has not presented strong evidence to satisfy the test set out in *Telstra*. Merely asserting that the Complainant has a trademark and that the Respondent has not used the disputed domain name is typically not sufficient to satisfy the *Telstra* test. Unlike *Telstra*, the Panel here can consider uses of the disputed domain name that would be in good faith. [WIPO Overview 3.0](#), section 3.3.

The *Amadeus* case (where the Respondent was successful) and the *Virtuoso* case (where the Respondent was unsuccessful) do not, of themselves, demonstrate a pattern of cybersquatting by the Respondent – who has been in the domain name investment business for ten years. Of course, losing in a prior UDRP or court case would not mean one is always in bad faith and prevailing in a prior UDRP or court case does not immunize a respondent from a bad faith finding in a later case, as the facts of each case must be considered on their own.

In short, the Panel concludes that the Respondent’s purchase from Sage Health of the disputed domain name comprising the four-letter dictionary word “sage” was not because of the Complainant or the Complainant’s SAGE trademark. Compare *DSPA B.V. v. Bill Patterson, Reserved Media LLC*, WIPO Case No. [D2020-1449](#).

The Panel wishes to clarify that this finding is not intended to suggest that speculation in domain names is always legitimate and in good faith (nor is it always in bad faith); where the case circumstances point to a speculative registration for the specific purpose of targeting existing brand owners, this runs afoul of good faith. *So Bold Limited v. TechOps, VirtualPoint Inc.*, WIPO Case No. [D2022-1100](#).

Based on the available record, the Panel finds the third element of the Policy has not been established

7. Reverse Domain Name Hijacking

The Respondent has requested that the Panel makes a finding of Reverse Domain Name Hijacking. Paragraph 15(e) of the Rules states:

“... If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.”

On balance, after considering all the evidence and submissions, the Panel does not find that the Complainant was brought in bad faith. The case involved complex issues, and the Complainant was not aware of the Respondent’s denial of knowledge of the Complainant until after the Response was filed.

It is puzzling, in a case involving a dictionary word, that the Complainant did not present more evidence of its reputation and relied upon so many outdated old cases. However, this does not clearly demonstrate bad faith on the part of the Complainant.

8. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson
Presiding Panelist

/W. Scott Blackmer/

W. Scott Blackmer
Panelist

/Tony Willoughby/

Tony Willoughby
Panelist

Date: September 1, 2023

Concurring opinion 1

I concur with the Panel Decision to deny the Complaint. I remain skeptical of the Respondent's denial of prior awareness of the Complainant, given the Respondent's history of registering domain names identical to established or trending technology trademarks comprised of dictionary terms (as noted by this Panelist in the *Virtuoso* case and by the dissenting panelist in the *Amadeus* case). However, the Complainant bears the burden of furnishing persuasive evidence of trademark targeting and failed to demonstrate that the mark was well known in the United States and likely to be known to the Respondent at the time the Respondent acquired the disputed domain name. This was important to reliably infer bad faith, given the nature of the mark and the Respondent's denial.

W. Scott Blackmer

Concurring opinion 2

I agree with my colleagues that the Complaint must fail. I also agree that in light of the finding under the third element it may strictly be unnecessary to consider the second element. However, I take the view that the Respondent is entitled to a positive finding that possibly he has a right and certainly a legitimate interest in respect of the disputed domain name.

There is no dispute between us that domain name dealing is a legitimate activity. The Respondent purchased the disputed domain name from a legitimate source and there is no evidence that the Respondent has made any use of it save to advertise it for sale, a legitimate use in the context of a legitimate form of business.

Paragraph 4(c) of the Policy informs respondents as to a non-exhaustive set of circumstances any one of which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate a respondent's rights or legitimate interests to the domain name for purposes of this element of the Policy. Of those circumstances the only one potentially relevant to this case is to be found in paragraph 4(c)(i): "before any notice to you of the dispute, your 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."

The only use made of the disputed domain name by the Respondent has been to connect it to a webpage offering it for sale for a six-figure sum. Is that a use in connection with a *bona fide* offering of goods or services?

In the context of dictionary terms section 2.10 of [WIPO Overview 3.0](#) addresses the issue under the heading of “Does a respondent have rights or legitimate interests in a domain name comprised of a dictionary word/phrase or acronym?”:

“The fact that a particular term has a dictionary meaning is sometimes confused with the notion of a “generic” term. When used in a non-dictionary distinctive sense (*i.e.*, in a manner that bears no relation to the goods or services being sold), such dictionary terms can function as “arbitrary” trademarks. (See the “orange” example below.)

2.10.1 Panels have recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term/phrase will not necessarily suffice. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights.

For example, a hypothetical respondent may well have a legitimate interest in the domain name <orange.com> if it uses the domain name for a website providing information about the fruit or the color orange. The same respondent would not however have a legitimate interest in the domain name if the corresponding website is aimed at goods or services that target a third-party trademark (in this example: Orange, well-known inter alia for telecommunications and Internet services) which uses the same term as a trademark in a non-dictionary sense.

Panels have assessed cases involving common phrases (whether spelled out or numerical) corresponding in whole or in part to numbers (*e.g.*, 24/7 or 365) in a similar manner as dictionary terms.

Panels also tend to look at factors such as the status and fame of the relevant mark and whether the respondent has registered and legitimately used other domain names containing dictionary words or phrases in connection with the respective dictionary meaning.”

There may be scope for argument as to whether or not the sale of a domain name falls strictly within the terms of paragraph 4(c)(i) of the Policy. However, the sets of circumstances detailed in paragraph 4(c) are not exhaustive and it merits pointing out that section 10.1 of [WIPO Overview 3.0](#) features an undistributed middle, best illustrated by the “orange” example given in the third paragraph quoted above. If the use of the domain name is consistent with the dictionary meaning of the word, it is likely to give rise to a legitimate interest; if on the other hand it does not do so, but targets the complainant’s trade mark, it does not do so. But what about an innocent legitimate use which does not relate to the dictionary meaning of the word, and does not target the complainant’s trade mark? For my part, I see no reason in principle why a registrant such as the Respondent, trading in domain names, of itself an unobjectionable activity, should not acquire at the very least a legitimate interest in respect of a domain name comprising a dictionary word and offering it for sale at any price he/she chooses, provided that when registering or acquiring the domain name in dispute he/she has no intention of targeting the complainant’s trade mark.

On that basis the Respondent, in my view, acquired at the very least a legitimate interest in respect of the disputed domain name when he purchased it from Sage Health. To find otherwise necessarily involves the Panel branding the Respondent, who has declared under penalty of perjury that he was unaware of the Complainant until he received the Complaint, a liar.

On this point the Complainant's case rests entirely on the fame of its SAGE trade mark, which according to the Complainant is of such a high order that the Respondent must have been aware of it when acquiring the disputed domain name.

The Complainant contends that the fame of the Complainant's SAGE trade mark is such that the Respondent must have known of that trade mark when acquiring the disputed domain name in January 2018. Ordinarily, complainants making such claims go to great lengths to explain the extent of that fame and how the trade mark must have come to the attention of the respondent. If the trade mark is in the COCA-COLA category (*i.e.*, a world famous name, which is not a dictionary word and which has been advertised extensively and visibly to the world at large), one would not need much supporting evidence. However, in this case the Complainant's trade mark is not a made-up name, but a dictionary word with more than one meaning and the Complainant has made no attempt of any kind to demonstrate the nature and extent of the fame of its SAGE trade mark such as to displace the possibility that the Complainant had never heard of the Complainant when purchasing the disputed domain name from Sage Health. There are no sales figures and no details of marketing expenditure; no sample advertisements; none of the obvious indications as to the likely extent of the exposure of the brand to the general public.

Not one of the annexes to the Complaint addresses the fame of the Complainant's trade mark.

The first reference to the fame of the Complainant's trade mark is in paragraph 17 of the Complaint which states that the disputed domain name "is identical to the previous and renowned trade mark SAGE registered and owned by the Complainant in several classes and jurisdictions". A list of the Complainant's trade mark registrations around the world is annexed, but no mention is made of the extent of its sales under the trade mark. Nor is any indication given as to how the Complainant's SAGE products are promoted and to which sections of the purchasing public.

The section of the Complaint dealing with the second element contains 11 paragraphs commencing with paragraph 22 which states: "Based on the fact that the Complainant has not authorized any third party to use the trade mark nor to register and or use the domain name, there are no grounds on which the Respondent may claim any legitimate interest on it." This is not a sensible claim. The fact that 'sage' is a dictionary word provides a strong argument that it gives rise to a legitimate interest.

In paragraph 23 the Complainant notes "that 'sage' means, among others, 'wise'" and goes on in paragraph 24 to recite the first paragraph of section 2.10.1 of [WIPO Overview 3.0](#) from which it concludes that because the Respondent is not using the disputed domain name for a use based on the dictionary meaning of "sage", the Respondent cannot have a legitimate interest in respect of it. As indicated above, I do not accept that argument and believe it to be misconceived.

In paragraph 25 the Complainant states that "the Respondent is not using the domain name for any fair business or for any other legitimate activity, but only as a showcase to try to sell the domain name" thereby ignoring the fact that dealing in domain names is of itself a perfectly legitimate business activity. This the Complainant regards as a non-use and goes on to cite two cases dealing with non-use of a domain name over an extended period of time, one of them being a very different case involving the trade mark BNP PARIBAS [[DAI2020-0002](#) *BNP Paribas v. Whois Privacy, Private by Design, LLC/Saeed Masajedian*] and the other, somewhat extraordinarily, a case involving the domain name <arm.ai>, a case in which there was no response. The complaint in that case failed and the panel had this to say:

"The Panel notes that, as of the date of this decision, the disputed domain name did not resolve to any active website. Nevertheless, the consensus view of previous UDRP panels is that passive holding in itself does not preclude a finding of bad faith. UDRP panels must examine all the circumstances of the case to determine whether a respondent is acting in bad faith. See [WIPO Overview 3.0](#), section 3.3. Among the factors panellists will look at is the degree of distinctiveness or reputation of the complainant's mark.

In this regard, the Panel notes that the disputed domain name comprises entirely of the dictionary term 'arm', which is quite different from the classic case where a well-known

distinctive third party mark has been incorporated in the disputed domain name. Given that the Complainant's trade mark 'ARM' is not particularly distinctive and that an Internet search for the term "arm" may disclose results unrelated to the Complainant, there is a reasonable possibility that the Respondent may not have targeted the Complainant when he registered the disputed domain name.

In the present case, there is no objective evidence before the Panel showing that the Respondent was aware of the Complainant or its trade mark at the time of registration of the disputed domain name, or that the Respondent had any intention to create confusion and/or capitalize on the value of the Complainant's trade mark to attract Internet users to its website for financial gain, or that the Respondent is otherwise taking an unfair advantage of the Complainant's trade mark. The circumstances referred to in paragraph 4(b)(i), (ii), (iii), and (iv) of the Policy are not applicable to the present case.

Notwithstanding the Complainant's claims regarding its reputation it is noteworthy that the Complaint does not list trademarks registered in or designating China; moreover, given that the disputed domain name is a dictionary word and is not in the Panel's view a highly distinctive mark, the Panel ultimately is not prepared to draw an inference regarding the Respondent's potential targeting of the Complainant.

The ultimate burden of proof rests with the Complainant."

What the Complainant hoped to derive from this case is not clear to me.

In paragraph 26 the Complainant contends that in the 5 years which have transpired since acquisition of the disputed domain name the Respondent should have made or prepared to make a *bona fide* use of it and in paragraph 27 it contends that the Respondent's non-use of the disputed domain name constitutes non-use of the kind covered by the *Telstra* case, which for reasons explained in the main body of the decision is inappropriate.

In paragraph 29 the Complainant objects to the exorbitant price being sought for the disputed domain name by the Complainant, but of itself there is nothing objectionable in a seller seeking whatever price he or she likes for a domain name. The bad faith cases registering an exorbitantly high price for a domain name invariably involve some other factor leading to that inference. The only portion of the second case (*COBEGA, S.A. v EAGERBIZ, S.L.*, WIPO Case No. [D2003-0375](#)) which has been translated reads: "In fact, it should be noted that several panel decisions have established that the offer of the domain name for sale to the public is an important indication of the existence of a lack of legitimate interest in the domain name."

I can appreciate that this may be so where there is a finding under the third element of the Policy of registration and use in bad faith, but not in the circumstances of this case where (a) the offer for sale is part of what, on its face, is a legitimate domainer business, (b) the Respondent has declared under penalty of perjury that he was unaware of the existence of the Complainant when he acquired the disputed domain name and (c) there is insufficient evidence before the Panel to conclude that the Respondent is a liar.

The only potential concern voiced by my colleagues is the fact that among the Respondent's portfolio of domain names (we don't know the size of the portfolio) there are some that involve dictionary words which are trade marks of technology companies, the inference being that the Respondent is targeting the trade marks of technology companies. But one of the attractions of dictionary words to domainers is that a very large number of such words are registered as trade marks and in a wide variety of classes and jurisdictions. Thus, SAGE, AMADEUS, and VIRTUOSO, the trade marks the subject of the UDRP proceedings in which the Respondent has been involved, are all registered in the United Kingdom alone for categories of goods and services going well beyond the technical sector. I for my part am unwilling to conclude on the basis of the limited facts that we have that the Respondent is intentionally targeting any particular business sector.

While some Panels take the view that domainers should conduct trade mark searches in respect of the names they register/acquire, such a view cannot sensibly apply to dictionary words in respect of which there

are necessarily innocent, unobjectionable uses of the word/name irrespective of any trade mark registrations which may appear from the search.

It appears from a screenshot of a blog exhibited by the Complainant that the Complainant has had an interest in AI for many years going back earlier than the date upon which the Respondent acquired the disputed domain name, but in countering the Complainant's contention on that score the Respondent has produced evidence to demonstrate that Sage AI associated with the Complainant was not launched until June 2023, over 5 years after the Respondent purchased the disputed domain name. In the absence of any argument from the Complainant that the Respondent ought to have been aware of the blog or the material featured in it, I regard it as being of no assistance to the Complainant.

I would have found that the Respondent has a right or legitimate interest in respect of the disputed domain name and that the Complaint fails under both the second and third elements of the Policy.

Tony Willoughby