Decision for dispute CAC-UDRP-100882

Case number	CAC-UDRP-100882
Time of filing	2014-12-12 13:51:49
Domain names	COMSURVEYMONKEY.COM, SURVEWYMONKEY.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	SurveyMonkey Inc.

Complainant representative

Organization	Matkowsky Law PC

Respondent

Organization	ICS Inc, ICS Inc

OTHER LEGAL PROCEEDINGS

The disputed Domain Names were originally subject to Administrative proceeding No. 100858 concerning multiple disputed domain names. However, the Complainant was allowed to file a separate complaint after the privacy veil was lifted.

IDENTIFICATION OF RIGHTS

RIGHTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

The Complainant relies on common law rights in the mark <SURVEYMONKEY> for services in class 42 of the Nice classification since 2000, as evidenced from the first use date in its issued federal U.S. Reg. no. 3945632 <SURVEYMONKEY> (word). Additionally, the Complainant provided evidence of its CTM Reg. No. 1044546. <SURVEYMONKEY> (word) registered on 2 March 2010 for services in class 42 of the Nice classification.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

According to the Registrars' verifications disputed Domain Names were registered on 22 April 2012 (SURVEWYMONKEY.COM), on 1 October 2012 (COMSURVEYMONKEY.COM) and on 5 November 2012 (WSURVEYMONKEY.COM).

The Complainant has provided evidence from which it results that the disputed Domain Names are being used for hosting commercial websites that provide web portal links and general advertisement links - including pay-per-click offers - to a variety of businesses and products that are highly related or competitive with Complainants' services and marks.

As to the Complainant’s contentions, the Complainant claims that the disputed Domain Names are nearly identical or confusingly similar to Complainant's well-known marks.

Furthermore, the Complainant contends that the Respondent does not have any rights or legitimate interest in the disputed Domain Names. The Respondent has not been authorized, licensed or permitted to register and use the domains by the Complainant. Moreover, the Complainant states the Respondent has not been commonly known by the disputed domain names.

Finally, the Complainant claims that the disputed Domain Names have been registered and are being used in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

The Panel is satisfied that the three disputed Domain Names <COMSURVEYMONKEY.COM>, <WSURVEYMONKEY.COM> and <SURVEWYMONKEY.COM> are confusingly similar to the Complainant's trademarks <SURVEYMONKEY> quoted above since the Complainant’s trademark are fully incorporated in the disputed Domain Names. Furthermore, it should be emphasized that merely adding a single letter “W” in the Domain Names <WSURVEYMONKEY.COM> and <SURVEWYMONKEY.COM> and duplicating the suffix <COM> in the Domain Name <COMSURVEYMONKEY.COM> does not sufficiently change the overall impression of confusing similarity between the marks and the disputed Domain Names.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Names (within the meaning of paragraph 4(a)(ii)of the Policy).

The Complainant’s assertions that the Respondent is not commonly known by the disputed Domain Names and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed Domain Names on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in those names. The Respondent has made no attempt to do so. Accordingly and in the absence of any explanation and evidence from the Respondent, the Panel finds that the Respondent has no rights or legitimate interests in the disputed Domain Names.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

Numerous panels have confirmed that the use of misspellings and/or typosquatting in domain names indicates bad faith registration. This is the case for the Domain Names at issue.

Furthermore, the websites hosted under the three disputed Domain Names provide “Pay per Click” and other advertisement pages linked with the Complainant’s activities. The Panel therefore finds that the Respondent additionally registered the disputed Domain Names with the intention of targeting the Complainant’s trademark for the purpose of disrupting the Internet traffic and takes a profit with the commercial links (see in this regard also the parallel UDRP case no. 100858 <SUREVEYMONKEY.COM> et al.).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Respondent has registered and used Domain Names that are identical to the Complainant's trademarks, in respect of which the Respondent has no rights or legitimate interest and which are registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **COMSURVEYMONKEY.COM**: Transferred
2. **WSURVEYMONKEY.COM**: Transferred
3. **SURVEWYMONKEY.COM**: Transferred

PANELLISTS

Name	**Dr. Tobias Malte Müller**

DATE OF PANEL DECISION 2015-01-28

Publish the Decision