Decision for dispute CAC-UDRP-100879

Case number	CAC-UDRP-100879
Time of filing	2014-12-12 10:48:37
Domain names	SURVEYMONNKEY.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	SurveyMonkey Inc.

Complainant representative

Organization	Matkowsky Law PC

Respondent

Organization	Venkateshwara Distributor Private Limited

OTHER LEGAL PROCEEDINGS

The Disputed Domain Name was originally subject to Administrative proceeding No. 100858, but Complainant was allowed to file a separate complaint after the privacy veil was lifted.

IDENTIFICATION OF RIGHTS

The Complainant is the holder of various registrations and/or applications for trademarks, comprising the wording “SURVEYMONKEY”, including the US trademark registration 3945632 for the word mark “SURVEYMONKEY”, first used on 21 May 2000 and registered on 12 April 2011 in class 35; and including the Community trademark registration 1044546 for the word mark “SURVEYMONKEY”, registered on 2 March 2010 in class 42.

FACTUAL BACKGROUND

The Complainant, SurveyMonkey Inc., is a company incorporated under the laws of Palo Alto, United States. The Complainant is a provider of web-based survey solutions for which it uses its SURVEYMONKEY mark.

The disputed domain name “surveymonnkey.com” was created on 20 April 2006 and is registered by the Respondent. The disputed domain name is used as a parking page containing pay-per-click advertisements.

As to the Complainant’s contentions, the Complainant claims that the disputed Domain Name is nearly identical or confusingly similar to Complainant's well-known mark.

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

The Complainant submitted evidence that the Respondent uses the disputed Domain Name that has no primary dictionary meaning to host a commercial website that provide competing web portal links and general advertisement links to a variety of businesses and products.

Finally, the Complainant claims that the disputed Domain Name has been registered and is 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 Name is 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).

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 Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

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

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

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

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

Confusing similarity of the Domain Name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since Complainant is the holder of the SURVEYMONKEY trademarks, which are used in connection with its business in web-based survey solutions, it is clearly established that there is a trademark in which the Complainant has rights.

The Panel considers the disputed domain name <surveymonnkey.com> to be confusingly similar to the SURVEYMONKEY trademarks. The Panel is of the opinion the addition of the insertion of a double letter 'n' in the Disputed Domain Name is not sufficient to escape the finding that the Domain Name is confusingly similar to the Complainant's trademarks [See Edmunds.com, Inc. v. Digi Real Estate Foundation, WIPO Case No. D2006-1043, (edmundss.com)].

Accordingly, the Complainant has made out the first of the three elements that it must establish.

No legitimate rights or interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that respondent has no rights or legitimate interests in respect of the domain names.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the Domain Name in order to shift the burden of proof to the Respondent. [See: Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094 (championinnovation.com); Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455 (croatiaairlines.com); Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110 (belupo.com)].

The Panel finds that the Respondent has not been commonly known by the Domain Name and that the Respondent has not acquired trademark or service mark rights. The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the Domain Name. In fact, the Respondent has been using the domain name to resolve to a parking page, containing sponsored links to competitors of Complainant. See Région Rhône-Alpes v. Registration Private, Domains by Proxy, LLC / Edmunds Gaidis, WIPO Case No. D2014-1942.

These verified allegations are sufficient to make out a prima facie case and shift the burden of proof to the Respondent. In the absence of a rebuttal by the Respondent and based on the case file, the Panel considers that the second requirement of Paragraph 4(a) of the Policy is, therefore, satisfied (See CAC Case No. 100707, Mount Gay Distilleries Limited v. shan gai gong zuo shi; WIPO Case No. D2007-0368, Teva Pharmaceutical USA, Inc. v. US Online Pharmacies; WIPO Case No. D2003-0796, Grupo Televisa, S.A., Televisa, S.A. de C.V., Estrategia Televisa, S.A. de C.V., Videoserpel, Ltd. v. Party Night Inc., a/k/a Peter Carrington).

Bad faith

The Complainant must prove on the balance of probabilities that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (See e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith [See BellSouth Intellectual Property Corporation v. Serena, Axel, WIPO Case No.

D2006-0007, where it was held that the respondent acted in bad faith when registering the disputed domain name, because widespread and long-standing advertising and marketing of goods and services under the trademarks in question, the inclusion of the entire trademark in the domain name, and the similarity of products implied by addition of telecommunications services suffix ("voip") suggested knowledge of the complainant's rights in the trademarks].

In the present case, the disputed domain Name has been registered on 20 April 2006. The trademarks invoked by the Complainant have been used since 2000. Moreover, the wording "SURVEYMONKEY" is known in relation to the Complainant. Moreover, the disputed Domain Name contains links to direct competitors of the Complainant. It can therefore be concluded that the Respondent was or at least had to be aware of the Complainant's business and related trademarks.

The Complainant also demonstrates that its SURVEYMONKEY trademarks have a strong Internet presence. Given the distinctiveness of the Complainant's trademarks and reputation, the Panel considers that it is difficult to conceive any plausible use of the disputed Domain Name by the Respondent that would be legitimate and not infringing the Complainant's well-known marks or unfair competition and consumer protection legislation.

In addition, the Panel finds that Respondent is not making a good faith use of the disputed Domain Name by attracting Internet users to a parking page, containing sponsored links to competitors of Complainant (See LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master, WIPO Case No. D2010-0138, where it was considered use in bad faith to connect domain names which are confusingly similar to a trademark, to websites containing sponsored links).

Finally, the fact that the Respondent used a WHOIS privacy service constitutes additional evidence of the Respondent's bad faith (See CAC Case No. 100849, ArcelorMittal S.A. v. david trapp).

Considering the above, the Panel finds that the Complainant has made out the three elements that it must establish.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SURVEYMONNKEY.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2015-01-28

Publish the Decision