Decision for dispute CAC-UDRP-102752

Case number	CAC-UDRP-102752
Time of filing	2019-11-07 11:33:09
Domain names	swinertton.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Swinerton Incorporated

Complainant representative

Organization	RiskIQ, Inc. c/o Jonathan Matkowsky

Respondent

Organization	Auld and White

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of multiple registrations for the mark SWINERTON, including US Trademark No. 2,284,825 registered on October 12, 1999 and US Trademark No. 2,282,855 registered on October 5, 1999.

FACTUAL BACKGROUND

The Complainant, Swinerton Incorporated, was founded in 1888 in the United States and provides commercial construction and construction management services. The Complainant has been involved in many projects worldwide, including in the United States and Colombia.

The Complainant is also the registrant for the domain name <swinerton.com>, created on September 9, 1995.

The disputed domain name, <swinertton.com>, was created on June 25, 2019 and presently resolves to an inactive page.

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the SWINERTON mark on the basis that the disputed domain name wholly incorporates the Complainant's trademark in its entirety, and that the intentional repetition of the letter "t" and the addition of the generic top-level domain ("gTLD") ".com" is insufficient to avoid the likelihood of confusion with the SWINERTON mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the SWINERTON mark.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the SWINERTON mark at the time of registration of the disputed domain name. The Complainant also asserts that the domain name is being used in bad faith as the disputed domain name resolves to a webpage containing Pay-Per-Click links ("PPC links") related to the Complainant.

RESPONDENT:

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

PARTIES CONTENTIONS

ATTENTION! If an administratively compliant Response has not been filed, you may only state in this section: No administratively compliant Response has been filed. In that case you may either omit the Complainant's contentions, or put a brief summary thereof into the Principal reasons for decision below, or specify it in this section. If an administratively compliant Response was filed, please specify the Parties´ contentions in this section. Please do not forget to erase these instructions and any of the options below which do not fit the proceedings you are deciding!

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

RESPONDENT:

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 disputed 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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark SWINERTON.

The only differences between the disputed domain name <swinertton.com> and the Complainant's SWINERTON trademark are the addition of the letter "t" and the generic Top-Level Domain ("gTLD") suffix ".com".

It is widely established that the addition of a gTLD to a disputed domain name does not avoid confusing similarity (see Accor v. Noldc Inc. WIPO Case No. D2005-0016; F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., WIPO Case No. D2006-0451; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; L'Oréal v Tina Smith, WIPO Case No. 2013-0820; Titoni AG v Runxin Wang, WIPO Case No. D2008-0820; and Alstom v. Itete Peru S.A. WIPO Case No. D2009-0877). The addition of the gTLD ".com" in the disputed domain name is therefore without significance in the present case since the use of a TLD is technically required to operate a domain name.

The disputed domain name differs from the SWINERTON mark merely by the addition of the letter "t". Such an addition does not significantly affect the appearance or pronunciation of the disputed domain name as compared to the SWINERTON mark. The Panel is thus of the view that the addition of the letter "t" constitutes the act of typo-squatting and does not avoid confusing similarity with the Complainant's trademark (see Schneider Electric S.A. v. Domain Whois Protect Service / Cyber Domain Services Pvt. Ltd., WIPO Case No. D2015-2333; Humana Inc. v. Cayman Trademark Trust, WIPO Case No. D2006-0073; WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.9).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the SWINERTON mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the disputed domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has stated that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant also stated that it is not connected or affiliated with the Respondent and did not authorize or license the Respondent to use the SWINERTON mark (See OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149; Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

In addition, the evidence submitted by the Complainant shows that all the details of the registrant on the WhoIs database are shielded. The registrant details provided by the Registrar show that the name of the registrant is "Jones West", and the name of the registrant organisation is "Auld and White". Thus, there is no evidence that the Respondent is commonly known by the disputed domain name.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain name was created long after the SWINERTON mark was registered. The Complainant's evidence shows that the SWINERTON mark has been registered since 1995 whereas the disputed domain name was only created in June 2019. Therefore, the prior registration of the SWINERTON mark is suggestive of the Respondent's bad faith when he registered the disputed domain name (see Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

The Complainant has further submitted evidence that an Internet search of the term "SWINERTTON" would lead to results relating to the Complainant. This is suggestive that the Respondent knew or should have known that its registration would be identical or confusingly similar to the Complainant's mark (see WIPO Overview 3.0, paragraph 3.2.2).

Therefore, the Panel finds that the Respondent knew or should have known about the SWINERTON mark and finds it inconceivable that the Respondent could have acquired the disputed domain name without knowledge of the SWINERTON mark. (See Leite's Culinaria, Inc. v. Gary Cieara, WIPO Case No. D2014-0041; WIPO Overview 3.0, paragraph 3.2.2).

Furthermore, the disputed domain name is presently inactive and resolves to a blank page. Where passive holding is found, non-use of a domain name would not prevent a finding of bad faith, and a panel will look at the totality of circumstances in each case (see WIPO Overview 3.0, section 3.3; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). Examples of factors considered by previous UDRP panels include: "(i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and (iv) the implausibility of any good faith use to which the domain name may be put." In this case, the Panel is of the view that the particular circumstances strongly suggest that the Respondent's non-use of the disputed domain name is in bad faith. The Complainant's trademark is distinctive which shows bad faith on the Respondent's part as it specifically targeted the Complainant, the Respondent has failed to submit a response, there is evidence that the Respondent likely used a false address when registering for the disputed domain name, and it is implausible that there is any good faith use to which the disputed domain name may be put (see WIPO Overview 3.0, section 3.3; Cloudflare, Inc. v. Private Registrant, Digital Privacy Corporation / Richard Sheng, WIPO Case No. DAI2019-0001; Philip Morris Products S.A. v. Han Ming, Lin Cheng, WIPO Case No. D2018-1635).
The Complainant has further submitted evidence that the disputed domain name previously redirected to a page that displays PPC links relating to, inter alia, "Swinerton Renewable Energy", "Contractors" and "Engineer Construction Company". These links are related to the industry that the Complainant operates in. Taken together with the confusing similarity between the disputed domain name and the Complainant's SWINERTON mark, this further indicates that the Respondent had intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark.

In addition, the Respondent did not submit a Response in this proceeding. The Respondent also used a privacy shield to hide their identity. These are all further indications of the Respondent's bad faith, which were considered by the Panel.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's mark, the fact that the disputed domain name previously redirected to pages containing PPC links related to the industry that the Complainant is in, the fact that no Response was submitted by the Respondent, and the fact that the Respondent likely used a false address, the Panel draws the inference that the disputed domain name was registered and is

being 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. **SWINERTTON.COM**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2019-12-29

Publish the Decision