Decision for dispute CAC-UDRP-103608

Case number	CAC-UDRP-103608
Time of filing	2021-03-09 09:17:03
Domain names	swnerton.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Swinerton Incorporated

Complainant representative

Organization	RiskIQ, Inc. - Incident Investigation and Intelligence (i3), Jonathan Matkowsky

Respondent

Name	caroline Marquez

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 has proven to be the owner of the SWINERTON trademark.

The Complainant is, inter alia, the owner of the following trademarks:

- U.S. trademark SWINERTON (word), reg. No. 2,284,825, registered on October 12, 1999. First use in commerce November 10, 1923;
- U.S. trademark SWINERTON (word), reg. No. 2,282,855, registered on October 5, 1999. First use in commerce in 1923;
- U.S. trademark SWINERTON (& Design), reg. No. 5,756,816, registered on May 21, 2019.

The Complainant also has common law rights in the United States going as far back as 1923 based on the certified first-use dates in the 2,284,825 and 2,282,855 registrations.

FACTUAL BACKGROUND

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

The Complainant, recognized nationally in the U.S. since its founding in 1888, through its predecessors-in-interest and subsidiaries, is one of the largest private companies across all industries providing commercial construction and construction management services throughout the U.S.

The Complainant owns several registrations for the SWINERTON trademark.

The disputed domain name <swnerton.com> was registered on March 4, 2021 and is used for a pay-per-click page displaying commercial advertisements, including links related to the Complainant's trademark.

The Complainant's trademarks long predate the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that:

- the disputed domain name <swnerton.com> is almost identical to the Complainant's SWINERTON trademark,
- the Respondent lacks rights or legitimate interests in the disputed domain name, and that
- the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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) Confusing similarity

The Panel agrees with the Complainant's assertions that a domain name which consists of an obvious misspelling of a trademark with no other meaning in context is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element, and that the disputed domain name contains sufficiently recognizable aspects of the

SWINERTON trademark and that the omission of a single letter does not affect the attractive power of such trademark, nor is it sufficient to distinguish the disputed domain name from the Complainant's SWINERTON trademark.

B) Lack of legitimate rights or interests

The disputed domain name is a distinctive, non-descriptive name. It is unlikely that the Respondent registered the disputed domain name without having the Complainant in mind. In addition the Respondent's use of the disputed domain name, resulting in pay-per-click commercial advertisements, including links related to the Complainant's trademark, fails to amount to any bona fide offering of goods or services under Policy 4(c)(i), or a legitimate non-commercial or fair use under Policy 4(c)(iii).The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorized by the Complainant are sufficient to constitute a prima facie demonstration of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The burden of evidence therefore shifts to the Respondent to show, using tangible evidence, that it does in fact have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so.
Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C) Registered or Used in Bad Faith

The Complainant gives sound bases for its contention that the disputed domain name was registered and has been used in bad faith.

Firstly, owing to the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademarks, and so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant's trademarks when registering the disputed domain name.

Secondly, the Panel accepts the Complainant's unchallenged assertion that the Respondent registered the disputed domain name with the aim of creating a likelihood of confusion with the Complainant's trademark, and also to profit from this confusion for its own commercial gain.

Thirdly, the disputed domain name redirects to a parked page with pay-per-click commercial advertisements, including links related to the Complainant's trademark and services. Therefore, the Panel also accepts the Complainant's unchallenged assertion that the Respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of Respondent's website. Policy, paragraph 4(b)(iv).

Fourthly, the disputed domain name appears to be a typo of the Complainant's trademark. This appears to be a case of typo-squatting, and, as such, it constitutes another inference of bad-faith registration and use.

Lastly, further inference of bad-faith registration and use of the disputed domain name is given by the fact that the Respondent deliberately chose to conceal its identity by means of a privacy protection service.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SWNERTON.COM**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

2021-03-21

DATE OF PANEL DECISION 2021-03-31

Publish the Decision