

Decision for dispute CAC-UDRP-103748

Case number CAC-UDRP-103748

Time of filing 2021-06-24 09:55:51

Domain names swimerton.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 zhongtai lin

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 several trademark registrations in the U.S., inter alia trademark registration no. 2,284,825 SWINERTON, registered on October 12, 1999, for various services in class 35 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

The Complainant was founded in 1888 and today is one of the largest private companies across all industries in the U.S. It provides commercial construction and construction management services throughout the U.S. The Complainant provides information on its services online at <swinerton.com>.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the Trademark and that the present case

is a clear case of typosquatting.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent is not affiliated with, nor authorized by the Complainant in any way, that the Complainant does not carry out any activity for, nor has any business with the Respondent, and that neither license, nor authorization has been granted by the Complainant to the Respondent to make any use of the Trademark, or apply for registration of the disputed domain name or any other domain name. The Complainant also states that the Respondent is not commonly known by the disputed domain name. Finally, the Complainant argues that the Respondent is using the disputed domain name to send or receive emails and that such use will likely lead recipients of the email to mistakenly believe that the mail originates with permission or approval of the trademark owner.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. In this regard, the Complainant contends that the Trademark is highly distinctive and long-established and that the present case is a clear case of typosquatting which indicates bad faith registration. Furthermore, the Complainant has submitted evidence that an Internet search of the second level of the disputed domain name prior to registration leads Google to suggest that the search is meant for "Swinerton" and argues that this is suggestive that the Respondent knew or should have known that its registration would be identical or confusingly similar to the Trademark. The Complainant also states that the Respondent configured MX server records for the disputed domain name and therefore uses the disputed domain name as part of a fraudulent scheme, such as to obtain sensitive or confidential personal information, or to solicit payment of fraudulent invoices.

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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; and
- (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.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark as it fully incorporates the long-

established Trademark with the only difference that the letter "n" in the middle of the Trademark is substituted with the letter "m". This is a clear case of typosquatting and the disputed domain name is nearly identical and confusingly similar to the Trademark.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain name. Furthermore, the Respondent's use of the disputed domain name also gives no indication of any rights or legitimate interests.

3.1 The Panel is also satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademark as the Trademark is highly distinctive and the disputed domain name obviously reflects a typo of the Trademark, which indicates that the disputed domain name was registered having the Complainant and the Trademark in mind.

3.2 As to bad faith use, by actively using the disputed domain name to sent or receive emails, the Respondent was, in all likelihood, trying to divert traffic intended for the Complainant for commercial gain as set out under paragraph 4(b)(iv) of the Policy. The configuration of MX records for email is indicative of probable use of the disputed domain name for the purpose of impersonating the Complainant and misleading Internet users. Again, the Respondent has also failed to comment on, let alone refute, the Complainant's submission in this regard.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SWIMERTON.COM**: Transferred

PANELLISTS

Name	Peter Müller
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DATE OF PANEL DECISION 2021-08-02

Publish the Decision
