

Decision for dispute CAC-UDRP-103845

Case number CAC-UDRP-103845

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Domain names swlnerton.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization Swinerton Incorporated

Complainant representative

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

Respondent

Name Aaron Yamasaki

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

Swinerton owns U.S. Reg. No. 2,284,825, issued October 12, 1999, in Int'l Cl. 35, first use October 11, 1923, for SWINERTON (Standard Characters); U.S. Reg. No. 2,282,855, issued October 5, 1999, in Int'l Cl. 37, first use 1923, for SWINERTON (Standard Characters); U.S. Reg. No. 5,756,816, issued May 21, 2019, Int'l Cl. 35,37, first use in 2018 for SWINERTON (& Design).

"Swinerton also has common law rights in the United States going as far back as 1923 based on the certified first-use dates in the '825 and '855 registrations".

FACTUAL BACKGROUND

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

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

PARTIES CONTENTIONS

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). The disputed domain name is a visual spoof of the Swinerton mark. Simple characters or character combinations can look like something else. For example, the letters "r" and "n" together can look like the letter "m". E.g. "rn". Also, the number "0" can look like the letter "O", the number "1" can look like the letter "l", and so on. In this case, the letter "l" is intended to look like the letter "i" because it has no other meaning and cannot even be otherwise pronounced. Also, by now "[i]t is widely established that the addition of a gTLD to a disputed domain name, particularly .COM, does not avoid confusing similarity". Therefore, the disputed domain name is "confusingly similar" to a mark in Complainant has established rights within the meaning 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). The Respondent is not affiliated with, nor authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license, nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademark, or apply for registration of the disputed domain name or any other domain name. The Whois contact information also supports that Respondent is not commonly known by the disputed domain name.

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). Given the distinctiveness of the trademark and the content of the website, it is clear that the Respondent registered the disputed domain name in knowledge of the Complainant and its trademarks. 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 on April 9, 2019. "Therefore, the prior registration of the SWINERTON mark is suggestive of the Respondent's bad faith when he registered the disputed domain name." All these elements lead to the conclusion that the Respondent has intentionally attempted to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of such websites.

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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:
 - i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
 - ii. the Respondent has no rights or legitimate interests with respect to the disputed domain name; and
 - iii. the disputed domain name has been registered and is being used in bad faith.
2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant has clearly proven that it is a long standing and successful company in the construction sector. It is clear that its trademarks and domain names "swinerton" are well-known.

The Complainant states that the disputed domain name is confusingly similar to its trademark. Indeed, the trademark is incorporated in its entirety in the disputed domain name. Change of one character in it is not distinctive enough.

The disputed domain name is therefore deemed identical or confusingly similar.

b) It has to be stressed that it was proven that there are no fair rights of the Respondent to the disputed domain name. The Respondent is not generally known by the disputed domain name, and has not acquired any trademark or service mark rights in the name or mark.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) The disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder. Therefore, there cannot be seen any legitimate interest of the Respondent.

It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered and used. It is therefore concluded that the disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. SWLNERTON.COM: Transferred

PANELLISTS

Name	Dr. Vít Horáček
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DATE OF PANEL DECISION 2021-07-26

Publish the Decision
