Decision for dispute CAC-UDRP-100880

Case number	CAC-UDRP-100880
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Domain names	SURVVEYMONKEY.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	SurveyMonkey Inc.

Complainant representative

Organization	Matkowsky Law PC

Respondent

Name	Rob Patel

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant, SurveyMonkey Inc., (herein after the Complainant and/or SurveyMonkey) has shown to be the registered owner of the "SURVEYMONKEY" trademark, US registration N. 3945632. In addition Complainant owns multiple registrations for this trademark, including CTM Reg. No1044546.

FACTUAL BACKGROUND

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

I. Protected Rights Relied on by the Complainant

Founded in 1999 at <surveymonkey.com>, the Complainant is the world's leading provider of web-based survey solutions, trusted by millions of companies, organizations and individuals alike to gather the insights they need to make more informed decisions. With more than 43 million surveys completed and 2.2 million survey responses daily, the Complainant has received numerous awards & recognitions, including from Silicon Valley Innovation Summit and PCMag, and has been featured in widespread media outlets, including TechCrunch, MSNBC, Bloomberg, and CNNMoney. Its customers include

100% of the Fortune 100, as well as other businesses, academic institutions, and organizations of all shapes and sizes. Literally millions of people use SurveyMonkey for everything from customer satisfaction and employee performance reviews, to course evaluations and research of all types.

The Complainant contends it has extensive common law rights in the mark SURVEYMONKEY (the "Mark") since 2000 and owns multiple registrations for the Mark covering its services, including CTM Reg. No. 1044546.

The Complainant claims its trademark constitutes a famous and well-known mark, as is corroborated by the Alexa Traffic Rank of <SurveyMonkey.com>. Over the past 3 months from when the proceeding was initiated, based on a combination of average daily visitors and pageviews, the site is ranked within the top 500 sites worldwide, and within the top 250 sites in the United States. As of August 27, 2003--well prior to the first creation date of the disputed domain name--the <Surveymonkey.com> site was already one of the top 1000 sites across the Internet worldwide, according to Alexa Traffic Rank.

The Complainant provided evidence that as of September 4, 2014, the disputed domain name was being used to divert users looking for Complainant's site to the disputed domain name hosting pay-per-click advertisements, including highly related advertisements directly competitive with Complainant's business. Furthermore, on or about September 4, the Complainant had sent a notice letter to the Respondent and its parking company provider, through counsel, requesting of the Respondent to voluntarily transfer the disputed Domain Name, and of the parking provider to enforce its terms of service prohibiting such intellectual property violations. The Respondent ignored the notice letter, although the Respondent's parking provider blocked the domain name from its system pursuant to its terms of service.

In response, the Respondent moved the domain to another parking provider on September 11, and then tried to move it back again on September 24 to the parking company that had terminated its participation with respect to the subject domain for violation of its terms of service. The original complaint against the Respondent was then initiated on October 6 against the privacy/proxy service being used to mask the Respondent's identity. Although the registrar confirmed the domain name would be locked down during the pendency of the proceeding, the name servers were changed on or about October 22 to different name servers hosted on Searchreinvented.com, which is used to host commercial advertisements for domains that are set to expire but are pending renewal (as this domain was set to expire pending renewal on October 22). Currently the website shows highly related ads to the Complainant's business.

As to the Complainant’s contentions it claims that the disputed Domain name is nearly identical or confusingly similar to its trademark for it only includes a slight misspelling, i.e., the insertion of a double letter. This deliberate attempt to take advantage of a misspelling or typographical error does not negate confusing similarity, but rather shows the domain is confusingly similar by design.

Additionally, according to the Complainant the Respondent’s use of the confusingly similar Domain Name to redirect Internet users to a directory site with links to survey-related products and services similar to Complainant’s products and services further increases the likelihood of confusion. And the display of the Complainant's registered trademark on the site as the very first related link adjacent to highly related third party services only exacerbates the likelihood of confusion further by suggesting that all of the services are originating from the Complainant, or are somehow sponsored, affiliated with, or endorsed by the Complainant.

The Complainant contends that

the Respondent does not pretend to have any right or legitimate interest in the disputed domain name. The Respondent has not been authorized, licensed or permitted to register and use the domain. Furthermore, it has not been commonly known by the disputed domain name and it is not making a legitimate non-commercial use thereof.

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, none of which is a bona fide offering of goods or services under the Policy. The Respondent offers highly related services that are likely to

cause confusion. Regardless of whether the Respondent consciously included links highly related or competitive with Complainant's services and mark, or whether an algorithm over which the Respondent had limited or no control generated them is irrelevant, because the advertisements undoubtedly take advantage of the Complainant's trademark.

Finally, according to the Complainant the disputed Domain Name has been registered and is being used in bad faith for typo-squatting and misspelling of well-known trademarks for pay-per-click revenue or affiliate marketing schemes is evidence of bad faith registration and use.

Moreover, the Respondent has chosen not to vindicate its conduct and provide an explanation of its choice of the domain name after the Complainant sent a notice letter prior to initiating this proceeding, which is further indicative of bad faith. The Respondent disrupts Complainant's business by intentionally attracting users for commercial gain by creating a likelihood of confusion with the Complainant. In fact, after the notice letter, the Complainant continued to show highly related ads by evading detection and moving the domain back and forth between two different parking companies. Under these facts, hiding behind a proxy and moving the domain to yet another parking company after receiving an actual notice letter is also evidence of bad faith intent to disrupt the Complainant's business.

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

PRELIMINARY OBSERVATIONS

This Panel notes that the Complainant’s mark SURVEYMONKEY was registered in the European Union in 2010 (Community Trade Mark 1044546) and in the USA in 2011 (Service Mark 3945632). Whereas the disputed Domain Name was registered on October 22, 2005.

The Panel accepts the Complainant’s claim that it has had common law rights in the mark SURVEYMONKEY since 2000, as certified by U.S. Reg. No. 3945632 which mentions a first use in commerce on May 21, 2000.

In addition, as noted by other Panels, the ICANN Policy and Rules do not require that the Complainant’s mark be registered with a government authority or agency for such right to exist.

However, after reviewing the evidence the Complainant brought, this Panel disagrees that the Complainant has, as it alleges,

“extensive common law rights” and/or that its sign is “a famous and well-known mark". In fact, this Panel is in full agreement with the previous Panel's opinion (SurveyMonkey Ltd v. Matkowsky Law PC case 100858), and therefore respectfully refers and here quotes its findings: «- though the Complainant states that its web-based survey service has seen “more than 43 million surveys completed and 2.2 million survey responses daily”, it does not detail when and where its service was provided or to how many different consumers its trademark has been displayed - though it states that “based on a combination of average daily visitors and pageviews, [its] site is ranked within the top 500 sites worldwide, and within the top 250 sites in the United States”, that was, per the Complainant, “[o]ver the past three months” only and not since the mark has been used. The Complainant did not submit materials that establish whether its name has been continuously used between its first use and the registration of the disputed domain names, and where. Thus, the Panel cannot conclude from the materials submitted by the Complainant that its SURVEYMONKEY name had kept the status of common law mark, or in which territories it would have attained this status, before the registration of the disputed domain names. In particular, though the Complainant alleges that “[a]s of August 27, 2003--well prior to the first creation date of any of the disputed domain names by any historical registrant--the <Surveymonkey.com> site was already one of the top 1000 sites across the Internet worldwide, according to Alexa Traffic Rank,” the evidence it submits is unconvincing».

Provided the above this Panel findings are as follows:

A. Identical or Confusingly Similar

The disputed domain name, SURVVEYMONKEY.COM, is identical to Complainant's trademark SURVEYMONKEY except it includes a slight misspelling, i.e., the insertion of a double letter V. This deliberate attempt to take advantage of a misspelling or typographical error does not negate confusing similarity.

Accordingly, the Panel finds that Complainant has satisfied the burden of proof with respect to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

A Respondent in a UDRP proceeding does not assume the burden of proof, but may establish a right or legitimate interest in a disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy:
a) that before any notice to the respondent of the dispute, he or she used or made preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
b) that the respondent is commonly known by the domain name, even if he or she has not acquired any trademark rights; or
c) that the respondent is making a legitimate, non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Respondent has no connection or affiliation with the Complainant, which has not licensed or otherwise authorised the Respondent to use or apply for any domain name incorporating Complainant’s trademark.

The Respondent does not appear to make any legitimate use of the domain name for non-commercial activities. Indeed, the disputed domain name does not appear to be used.

The Respondent does not appear to have been commonly known by the domain name.

The Respondent has not proved, affirmed or even alleged to have legitimate rights (within the meaning of paragraph 4(a)(ii)of the Policy) to the disputed domain name.

Therefore, the Respondent has not shown any facts or elements to justify prior rights and/or legitimate interests in the disputed domain name in accordance with the UDRP Policy. The Respondent did not provide any elements to demonstrate, as requested by the Policy, that it used or made preparations to use the disputed domain name or a name corresponding to it in connection with a bona fide offering of goods or services.

Accordingly, the Panel finds that the Complainant has satisfied the burden of proof with respect to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant has to the satisfaction of the Panel shown that the Respondent registered and used the disputed domain name in bad faith.

Indeed it appears that the Respondent intentionally attempted to attract Internet users to his own website misleading them into believing the website www.SURVVEYMONKEY.COM.com was operated, authorized and/or connected to the Complainant. By so deflecting Internet users, the Respondent has shown bad faith registration and use of the disputed domain name that clearly falls within the example given in paragraph 4(b)(iv) of the Policy.

In addition, the disputed domain name, identical to Complainant's trademark except it includes a slight misspelling, represents a clear case of typo-squatting.

These facts, including the absence of a response to the cease and desist letter sent by the representative of the Complainant first and then to the complaint itself, confirm Complainant's assertions that the disputed Domain Name has been registered and 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. **SURVVEYMONKEY.COM**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2015-01-25

Publish the Decision