

## **ADMINISTRATIVE PANEL DECISION**

Momentive Inc. f/k/a SurveyMonkey Inc. v. Privacy service provided by Withheld for Privacy ehf / Stuart Morgan  
Case No. D2022-1737

### **1. The Parties**

The Complainant is Momentive Inc. f/k/a SurveyMonkey Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Stuart Morgan, United Kingdom.

### **2. The Domain Name and Registrar**

The disputed domain name <surveymonkeys.org> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 13, 2022. On May 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 20, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on May 23, 2022. On June 1, 2022, a third party claiming to be the owner of the disputed domain name sent an email communication to the Center offering to transfer the disputed domain name to the Complainant.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2022. The Respondent did not submit any response. However, on June 14, July 4 and July 8, 2022, the same third party sent further email communications to the Center with

a repeated offer to cancel the registration of the disputed domain name. Upon the Center's invitation to clarify its relationship with the Respondent, the third party failed to do so.

On July 7, 2022, the Center notified the Parties that it would proceed to Panel appointment.

The Center appointed Marilena Comanescu as the sole panelist in this matter on July 12, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

Momentive Inc., formerly named SurveyMonkey Inc., is an affiliated company of Momentive Global Inc., a publicly listed company and a leading provider of survey software products and purpose-built survey solutions, providing services and products worldwide to about 345,000 organizations and more than 20 million users, reporting total revenue in the first quarter of 2022 in amount of USD 117.0 million.

The Complainant's product named "SurveyMonkey" allows users to create and send surveys online. The Complainant displays information about the SurveyMonkey product particularly on its website available at <surveymonkey.com> which was created on November 6, 1999.

The Complaint holds 42 trademark registrations for SURVEYMONKEY in at least 21 countries and territories throughout the world such as the following:

- the United States Trademark Registration No. 3762880 for SURVEYMONKEY (word), filed on August 4, 2009, registered on March 23, 2010 and covering services in Nice class 42; and
- the International Trademark Registration No. 1044546 for SURVEYMONKEY (word), registered on March 2, 2010 in numerous jurisdictions worldwide and covering services in Nice class 42.

The disputed domain name was registered on August 17, 2021.

According to the evidence provided by the Complainant, at the time of filing of the Complaint, the disputed domain name redirected to a website named "Swagbucks" which claimed to provide loyalty and consumer rewards to its members for their online everyday activities like searching the web, playing games, watching videos or shopping.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to its widely-known trademark SURVEYMONKEY, the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name to it.

##### **B. Respondent**

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

On June 1 and 14, 2022, July 4 and 8, 2022, the Center received several email communications from a third party claiming to be the owner of the disputed domain name stating particularly that he was not interested in the disputed domain name and he was willing to cancel the disputed domain name.

## 6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the trademark SURVEYMONKEY.

The disputed domain name <surveymonkeys.org> reproduces the Complainant's trademark with an additional final letter "s". However, the addition of the letter "s" consists of a common, obvious or intentional misspelling of the trademark does not prevent a finding of confusing similarity for the purposes of the first element of the Policy. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".xyz", ".org") is typically disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark SURVEYMONKEY, pursuant to the Policy, paragraph 4(a)(i).

### B. Rights or Legitimate Interests

The Complainant asserts that it has given no license or other right to use its trademark to the Respondent, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services.

Under the Policy, "a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP". See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not substantially replied to the Complainant's contentions to advance a claim to any rights or legitimate interests in the disputed domain name.

Further, there is no evidence before the Panel to suggest that the Respondent has made a *bona fide* use of the disputed domain name, or has been known by this disputed domain name, or is making any legitimate noncommercial or fair use of the disputed domain name.

In fact, at the time of filing of the Complaint, the disputed domain name resolved to a website where Internet users were invited to use such website for daily activities in order to obtain loyalty and consumer rewards. Diverting consumers, who are looking for products or services related to the Complainant's trademark, to a

website unrelated to the mark does not represent a *bona fide* offering nor legitimate noncommercial or fair use under the Policy because it competes with or capitalizes on the reputation and goodwill of the Complainant's distinctive mark and/or otherwise misleads Internet users.

Also, the communications of the third party claiming to be the owner of the disputed domain name offering to cancel the disputed domain name cannot be considered *bona fide* because such third party (i) failed to respond to the Center's invitation to clarify its relationship with the Respondent; and (ii) assuming the third party is indeed the Respondent, it did not comply with the remedy to transfer the disputed domain name initially suggested in the first email communication of June 1, 2022 and requested by the Complainant, both in the Complaint and as reactions to its communications. In fact, such repeated offer to cancel the disputed domain name can be considered a recognition of the fact that such third party, potentially the Respondent, was well aware of the fact that he/she was infringing the Complainant's trademark and that he/she did not have any rights or legitimate interest in registering and holding the disputed domain name.

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

### **C. Registered and Used in Bad Faith**

The Complainant holds trademark rights in SURVEYMONKEY since at least 2010.

The disputed domain name was created in August 2021 and incorporates with a minor alteration the Complainant's trademark and product name.

From the above, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business, and particularly targeting its SURVEYMONKEY trademark.

At the time of filing of the Complaint, the disputed domain name resolved to a third party's page offering various services to Internet users.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

The Respondent was using without permission the Complainant's well-known trademark in order to get traffic on its web portal and to misleadingly divert Internet users to a third party's website, and thus to likely obtain commercial gain from the false impression created with regard to a potential affiliation or connection with the Complainant.

Furthermore, previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar to a third party's well-known trademark can, by itself, constitute a presumption of bad faith for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <surveymonkeys.org> be transferred to the Complainant.

*/Marilena Comanescu/*

**Marilena Comanescu**

Sole Panelist

Date: July 26, 2022