

ADMINISTRATIVE PANEL DECISION

Tenaska, Inc. v. Teka Daniels
Case No. D2022-4924

1. The Parties

Complainant is Tenaska, Inc., United States of America, represented by Bracewell L.L.P., United States of America.

Respondent is Teka Daniels, United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 2022, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on December 23, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 6, 2023.

The Center verified that the Complaint together with the amended 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 Respondent of the Complaint, and the proceedings commenced on January 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 26, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 27, 2023.

The Center appointed Timothy D. Casey as the sole panelist in this matter on February 6, 2023. 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

Complainant is a corporation headquartered in Omaha, Nebraska in the United States of America. Complainant is engaged in the business of power management, development and acquisition of generation assets, natural gas marketing, operation of power plants, and other power infrastructure related services. Complainant primarily operates in North America and has estimated gross operating revenues of USD 18.4 billion.

Complainant owns three trademark registrations in the United States of America for TENASKA (the "TENASKA Marks"), each of which alleges a first use in commerce in at least one class as early as 1986:

Mark	Designation	Class(es)	Registration No.	Registration Date
TENASKA	United States of America	42	1,471,785	January 5, 1988
TENASKA	United States of America	35, 36, 37, 42	2,258,609	July 6, 1999
TENASKA	United States of America	35, 36	2,638,946	October 22, 2002

The disputed domain name was registered November 18, 2022. Complainant provided evidence showing that the disputed domain name was used multiple times in email communications, fraudulently identifying two employees of Complainant, that were sent to customers, vendor and/or potential customers or vendors of Complainant attempting to obtain credit lines or quotes for the purchase of goods, including batteries and synthetic motor oil.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is essentially identical to the TENASKA Marks because it incorporates the entirety of each of the TENASKA Marks and merely adds the generic term "power", which does not negate the confusing similarity. Citing section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and other WIPO UDRP cases, Complainant contends that the addition of the generic term to the disputed domain name only serves to increase the confusing similarity, especially since Complainant's main business is power and energy related.

Complainant contends that there is no evidence that Respondent was using or preparing to use the disputed domain name in connection with a *bona fide* offering of goods or service, was authorized to use the TENASKA Marks, or was commonly known by the disputed domain name. Rather, Complainant notes that Respondent is using the disputed domain name to divert and mislead consumers for illegal purposes by defrauding email recipients through an email phishing scheme. In particular, Complainant alleges Respondent has engaged in an email phishing scheme, seeking credit lines and fraudulent orders, using email addresses connected to the disputed domain name in an attempt to defraud Complainant's employees, affiliates, vendors, and customers by posing as an official representative of Complainant's organization. Complainant contends that two of the emails sent by Respondent used the name of the president of a division of Complainant. Complainant further contends that the disputed domain name is a

variant of Complainant's own domain names and seeks to capitalize on consumer recognition of the TENASKA Marks to confuse victims as to the source of Respondent's emails.

Complainant contends the disputed domain name was both registered and has been used in bad faith. Complainant notes that Respondent's use of the disputed domain name to impersonate Complainant and its personnel, for nefarious activities, clearly indicates that Respondent was aware of Complainant and the nature of Complainant's business at least at the time of registration of the disputed domain name and thereafter. For the same reason, *i.e.*, the alleged fraudulent email phishing scheme using addresses connected to the disputed domain name, Complainant contends Respondent has been using the disputed domain name in bad faith. Complainant further contends that even if Respondent were to cease using the disputed domain name, the passive holding of the disputed domain name that was registered in bad faith would itself be evidence of bad faith usage because Respondent was clearly aware of the TENASKA Marks and business structure, Respondent registered the disputed domain name with the intent to mislead consumers, and its continued control of the disputed domain name avails Respondent of the opportunity to continue engaging in abusive conduct against Complainant and its employees, affiliates, vendors, and customers. Lastly, Complainant contends that Respondent's utilization of a privacy shield service supports an inference of bad faith to hide evidence of bad faith activities.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant's use of the TENASKA Marks and registrations are more than sufficient to establish that Complainant has trademark rights in the TENASKA Marks.

Complainant contends that the disputed domain name is confusingly similar to the TENASKA Marks. Complainant contends that the addition of the term "power" in the disputed domain name does not prevent a finding of confusing similarity to Complainant's TENASKA Marks.

The Panel agrees and finds that the disputed domain name is confusingly similar to the TENASKA Marks.

B. Rights or Legitimate Interests

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name. Respondent does not appear to be commonly known by the disputed domain name. Complainant has not licensed or authorized Respondent to use the TENASKA Marks. Regardless of what Respondent's true intention may have been in contacting third parties under false pretenses using the disputed domain name, use of the disputed domain name to impersonate Complainant's employees in this manner alone is sufficient to support the Panel's conclusion that Respondent's use was not a legitimate noncommercial or fair use and does not constitute a *bona fide* offering of goods or services. Respondent has not rebutted Complainant's *prima facie* case and has provided no arguments or evidence showing potential rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, comprising the TENASKA Mark and adding a generic descriptor related to Complainant's business, carries a risk of implied affiliation with Complainant as it effectively impersonates or suggests sponsorship or endorsement by Complainant, and accordingly cannot constitute a fair use in these circumstances. See section 2.5.1 of the [WIPO Overview 3.0](#).

Finally, Complainant has provided evidence that the disputed domain name is being used in connection with a potentially fraudulent scheme via emails; such use can never confer rights or legitimate interests on Respondent. See in this regard section 2.13 of the [WIPO Overview 3.0](#).

For these reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Given i) the timing of Complainant's first use and first registration of the TENASKA Marks, predating the registration of the disputed domain name by over 30 years, and Complainant's use of the TENASKA Marks in association with the noted services, ii) the nature of the disputed domain name in combination with fraudulent emails that appear designed to trick third party's into believing some affiliation with Complainant, iii) the timing of the registration of the disputed domain name and Respondent's clear knowledge of the TENASKA Marks and Complainant's business, iv) Complainant's prior trademark rights in the United States of America, and v) evidence of Respondent's subsequent usage, the Panel finds that Respondent clearly knew of the TENASKA Marks at the time of registration of the disputed domain name. Respondent's registration of the disputed domain name was therefore in bad faith.

In addition, the Panel finds the subsequent apparently fraudulent usage of the disputed domain name and the sending of email communications impersonating employees of Complainant, to constitute use in bad faith consistent with paragraph 4(b)(iv) of the Policy.

The Panel concludes that the disputed domain name was registered and is being used in bad faith.

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 <tenaskapower.com> be transferred to Complainant.

/Timothy D. Casey/

Timothy D. Casey

Sole Panelist

Date: February 23, 2023