

ADMINISTRATIVE PANEL DECISION

Tarmac Trading Limited v. Garrett Henson, Atum Systems
Case No. D2023-2091

1. The Parties

The Complainant is Tarmac Trading Limited, United Kingdom (“U.K.”), represented by Freeths LLP, U.K.

The Respondent is Garrett Henson, Atum Systems, United States of America (“U.S.”).

2. The Domain Name and Registrar

The disputed domain name <tarmactrader.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 11, 2023. On May 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 11, 2023, 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 (CONTACT PRIVACY INC. CUSTOMER 0165382887) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 12, 2023 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 25, 2023. The Respondent sent an informal email communication on May 25, 2023.

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 May 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 20, 2023.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on July 13, 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

The Complainant, incorporated in the U.K. in 1948, is a supplier of building materials, road building and repairing materials, and associated construction and building services, and it operates under the trademark TARMAC. The Complainant is a successor to the original Tar Macadam Syndicate Limited, founded in 1903. Today, the Complainant employs around 7,000 people across a network of more than 350 sites across the U.K. and operates internationally providing building services and construction solutions under the TARMAC mark in numerous countries and regions. The Panel, under its general powers articulated, *inter alia*, in paragraph 10 of the Rules, has consulted the Complainant's website at <tarmac.com>.

The Complainant owns various trademark registrations for the brand TARMAC, including U.K. trademark registration No. 254287, TARMAC, word, registered on May 6, 1903, in class 19, which contains a disclaimer that the mark gives no right to the exclusive use of the word "tar"; and other trademark registrations that do not contain this disclaimer, for example, European Union trademark registration No. 4257101, TARMAC, word, registered on March 21, 2006, in classes 19, 35, 36, 37, 39, and 42, (collectively the "TARMAC mark").

The Complainant further owns various domain names corresponding to its TARMAC mark, including <tarmac.com> (registered on October 27, 1998) that resolves to its corporate website.

The disputed domain name was registered on October 4, 2022, and it resolves to a landing page that shows the image of a robot and requests to click on a button in order to confirm that the user is not a robot or a bot, indicating, "click 'allow' to confirm that you are not a robot!". At the time of drafting this decision, the further access to this site is blocked with an alert message indicating that it may contain suspicious malware.

5. Parties' Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

The Complainant and its trademark TARMAC are well-known in the field of construction and building materials.

The disputed domain name is confusingly similar to the Complainant's trademark, as it incorporates the TARMAC mark adding the term "trader". The confusion and affiliation is enhanced by the Complainant's practice of licensing the TARMAC mark to a group of affiliated companies for use in their respective company or trading names in conjunction with other non-distinctive elements. The Respondent's website would be considered connected to the Complainant or one of its operating companies using the TARMAC mark under license.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Parties have no relationship, and the Respondent has not been authorized to use the TARMAC mark, which was registered long before the registration of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The disputed domain name incorporates (with no consent) the TARMAC mark taking unfair advantage of the Complainant's rights. This case is similar to *Tarmac Trading Limited v. Tarmac Group, Tranetech Software Solutions*, WIPO Case No. [D2018-0909](#). The use of the term "trader" in the disputed domain name, meaning a business or a person

who buys and sells goods, does not denote anything specific, such as a geographical area, but instead is a general term referencing to part of the Complainant's business (the sale of its products under its TARMAC mark). The disputed domain name resolves to a landing page that includes phishing content and other harmful content that may be related to a scam. The Internet users accessing to the site at the disputed domain name may have their personal and financial details compromised. This use of the disputed domain name damages the Complainant and interferes with its legitimate business.

The Complainant has cited previous UDRP decisions under the Policy that it considers supportive of its position, and requests the cancellation of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Respondent only sent an informal email communication to the Center on May 25, 2023, indicating, "What is the complaint about?."

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Identical or Confusingly Similar

The Complainant indisputably has rights in the registered trademark TARMAC, both by virtue of its trademark registrations for this brand, and as a result of its continuous use of this trademark over a century.

The disputed domain name incorporates the TARMAC mark in its entirety, and the term "trader". The first element of the Policy functions as a standing (or threshold) requirement. The Complainant's trademark is recognizable in the disputed domain name, and the generic Top-Level Domain ("gTLD") ".com" is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, 1.8, and 1.11, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Accordingly, this Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

B. Rights or Legitimate Interests

The Complainant's assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name (providing the circumstances of paragraph 4(c) of the Policy, without limitation), in order to rebut the Complainant's *prima facie* case. See section 2.1, [WIPO Overview 3.0](#). However, the Respondent has not replied to the Complainant's contentions, not providing any explanation and evidence of rights or legitimate interests in the disputed domain name.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that the Complainant has constructed a strong *prima facie* case evidencing that the Respondent has not been authorized to use the TARMAC mark, there is no relationship between the Parties, and the disputed domain name has not been used in connection to a *bona fide* offering of goods or services.

The Panel notes that the Respondent's name revealed by the Registrar verification shares no similarity with the terms included in the disputed domain name.

The Panel has further corroborated that the Respondent does not appear to own any trademark registration including or consisting of the word "tarmac" and/or the terms included in the disputed domain name "tarmac trader". In this respect, the Panel, under its general powers, has consulted the WIPO Global Brand Database.

The Panel further notes that the term "tarmac" is an English word with various meanings, as "a material used for making road surfaces, consisting of crushed stones mixed with tar", or "an area with a surface made of tarmac, especially the area from which planes take off at an airport", and it can also be used as a verb, as "to apply tarmac to" (a surface).¹

Registering a domain name comprised of a dictionary word or phrase may, under certain circumstances, confer rights or legitimate interests on a respondent, when it is genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights. See section 2.10, [WIPO Overview 3.0](#).

The Panel notes, however, that nothing in the file suggests any use of the disputed domain name related to the meaning of the terms "tarmac" or "tarmac trader". The website linked to the disputed domain name does not include any related content, and the Respondent has not provided any explanation and/or any evidence in this respect.

On the contrary, according to the evidence provided by the Complainant, the disputed domain name resolves to a landing page that requires some information to access to its content, and, once this access is provided, the user is directed to various third parties' sites unrelated to the meaning of the words included in the disputed domain name. Particularly, to a pornographic site indicating, "!!These girls from {city} want to chat with you! Please confirm that you are in {city} now to see them all", or to a site that apparently promotes online businesses or investments, indicating, "take this FREE test and find out how you can make money on the Internet to become THE RICHEST PERSON IN YOUR CITY!", which requests information about the user's gender including two click bottoms (for "Man" and for "Woman").

It is further remarkable that the Respondent has sent an informal communication by email but chosen not to provide a substantive response to the Complaint, not providing any evidence of any rights or legitimate interests in the disputed domain name.

Therefore, the circumstances of this case lead the Panel to conclude that the Respondent has not rebutted the Complainant's *prima facie* case, and nothing in the case file gives any reason to believe that the Respondent has any rights or legitimate interests in respect of the disputed domain name. The second element of the Policy under paragraph 4(a)(ii) has been established.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(a)(iii), requires that the Complainant establishes that the disputed domain name has been registered and is being used in bad faith.

The applicable standard of proof is, likewise, the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel, under its general powers, has corroborated that the Complainant and its trademark have a strong presence over the Internet, so that any search for the term "tarmac" over the Internet reveals the Complainant's prior rights. The Panel further notes the long presence and use in the field of construction of

¹ The Panel, under its general powers, has consulted the term "tarmac" in various English dictionaries.

the Complainant's trademark for over a century, since 1903.

The Panel considers that all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

- (i) the TARMAC mark is internationally used for a long period of time (over a century), and has a strong presence over the Internet, so that any search over the Internet reveals the Complainant and its trademark;
- (ii) the disputed domain name incorporates the TARMAC mark and a term ("trader"), which does not avoid the affiliation with the Complainant or its business related companies, creating the impression that the disputed domain name is owned or sponsored by the Complainant or one of its licensed associated companies. In this respect, the Complainant has alleged that it licenses the TARMAC mark to a group of companies allowing the use of this trademark in conjunction with other terms in their respective company or trading names;
- (iii) the disputed domain name resolves to a landing page that requests certain information to provide access to its content, and, once access is granted, according to the evidence provided by the Complainant, this site redirects the user to third parties' website unrelated to the meaning of the words "tarmac" or "tarmac trader", particularly, to various sites apparently providing adult content or online investment opportunities; and
- (iv) the Respondent has not offered any explanation of any rights or legitimate interests in the disputed domain name, and has not come forward to deny the Complainant's assertions of bad faith, choosing not to reply to the Complaint.

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered and has been used targeting the Complainant's trademark in bad faith to increase the traffic of the Respondent's site, taking unfair advantage of the affiliation to the Complainant and its trademark, or to the Complainant's licensed associated companies.

The disputed domain name has further been used, on a balance of probabilities, to obtain certain information from Internet users, requesting personal details to access to the content provided in the Respondent's website or to redirect the user to third parties' sites, which indicates any type of phishing scam or other fraudulent business that constitutes bad faith under the Policy. See section 3.4, [WIPO Overview 3.0](#).

All of the above-mentioned circumstances lead the Panel to conclude that the disputed domain name was registered and used in bad faith. Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and used the disputed domain name in bad faith under the third element of the Policy.

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 <tarmactrader.com> be cancelled.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: July 26, 2023