



## CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

### DOMAIN NAME DISPUTE

### ADMINISTRATIVE PANEL DECISION

CIIDRC case number: 12286-URDP

Decision date: November 3, 2020

Panelist: Fabrizio Bedarida

Domain Name in Dispute: angelsensor.com

Complainant: Seraphim Sense Ltd.

Respondent: Przemyslaw Sibera

Registrar: GoDaddy.com, LLC

#### 1. PROCEDURAL HISTORY

The Canadian International Internet Dispute Resolution Centre ("CIIDRC") has informed the Panel as follows: The Complaint under the Uniform Domain Name Dispute Resolution Policy ("Policy") was filed with the CIIDRC on September 22, 2020 requesting a single-member Panel. The CIIDRC checked the Complaint and determined that it satisfies the formal requirements of the Policy, the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the CIIDRC Supplemental Rules. The CIIDRC transmitted by email to the concerned Registrar a request for registrar verification in connection with the disputed domain name. On September 25, 2020 the Registrar confirmed that the disputed domain name was placed in a Registrar LOCK. The Registrar also provided the identity and contact details of the Respondent to the CIIDRC. On September 28, 2020, CIIDRC, as Service Provider, confirmed compliance of the Complaint and commencement of the dispute resolution process. Pursuant to UDRP Rule 4 and Supplemental Rule 5, CIIDRC notified the Respondent of this administrative proceeding and forwarded a Notice with login information and a link to the Complaint to the Respondent on September 28, 2020. The Respondent failed to file its response by the due date of October 19, 2020. On October 22, 2020 the CIIDRC appointed Mr. Fabrizio Bedarida as a single-member Panel and so notified the Parties to this proceeding. 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

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Center to ensure compliance with the Rules, paragraph 7. The Center set November 5, 2020, as the due date to receive the decision from the Panel.

On October 28, 2020 the Complainant, having noted that after the commencement of this proceeding the Respondent's website had been taken down and thus that its content was no longer available, filed a request to accept a supplemental filing constituted of several printouts of the Respondent's website (as it was before the commencement of this proceeding) showing its contents and the alleged violation of the Complainant's rights.

According to Paragraph 10 of the UDRP Rules, the panel has the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition. Previous panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why the party was unable to provide the information contained therein in its complaint or response (e.g. owing to some "exceptional" circumstance).

Having considered the above and having reviewed the Complainant's request, The Panel does not see any "exceptional" circumstance that would give grounds for accepting the supplemental filings. In fact the material provided by the Complainant was already available when the complaint was filed, and indeed a couple of printouts of the Respondent's website showing similar contents were attached to the Complaint. Therefore, the Complainant's request has been denied.

## **2. FACTS ALLEGED BY THE PARTIES**

The disputed domain name [angelsensor.com](http://angelsensor.com) was acquired in 2012 specifically when the product name was chosen.

Angel Sensor was established in 2013 by Eugene Jorov and Amir Shlomovich. They invented the original concept and designed Angel Sensor to be an open-source wristband for continuously collecting physiological data, to be utilized for medical purposes and general health. One of the earliest mentions online is the crowd funding campaign conducted on Indiegogo (Campaign Duration: 09/16/13 - 11/01/13).

Angel Sensor is the product developed by the Complainant, i.e. Seraphim Sense Ltd.

The Complainant has gained global exposure and has been featured on TechCrunch, The Wall Street Journal and other news sources. It has attracted investors in Israel, France, China and the US. The name Angel Sensor has come to be associated with health innovation and the open-source community in digital health.

The trademark Angel Sensor is registered in the US and other countries.

It is not clear when the disputed domain name was acquired by the Respondent.

At the time of this decision the disputed domain name does not resolve to an active website.

### 3. CONTENTIONS OF THE PARTIES

- **Complainant**

I. The domain name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant contends that the disputed domain name is identical and thus confusingly similar to the ANGEL SENSOR trademark.

II. The Respondent has no rights or legitimate interests in respect of the domain name.

In support of this claim the Complainant asserts that:

- There are absolutely no products or services offered by the current domain operator that can be associated with the words "Angel Sensor", except for illegal references to the Complainant's product;
- The current owner clearly engages in fraud. The only relation between the current website and the domain name "angelesensor.com" is content and media stolen from the Complainant's various online assets and used to give the impression of being associated with the Complainant's Angel Sensor product;
- The fraudulent website illegally uses the Complainant's founders' profiles, photos, company trademarks, logos, media and other materials.

This incident has been reported to the Israeli police, case 2020/232350, and to the Internet Crime Complaint Center.

III. The domain name has been registered and is being used in bad faith.

The Domain Name has been registered since 2013 to the Complainant, and the name and Domain Name has been used by the Complainant for several years. In 2020, the Complainant discovered that due to technical issues the domain angelsensor.com owned by the Complainant was not automatically renewed by name.com, and that an unidentified third party had hijacked the Domain Name and registered it on godaddy.com. The date of the Domain Name re-registration was not confirmed by the Registrar. However, it is clear that the Domain Name was purchased upon the lapse of the Domain Name by the Respondent and used by the Respondent for a website displaying contents and media stolen from the Complainant's various online assets. The Respondent's website is used to post health-related articles, under the name of the Complainant's founders and in the guise of the Complainant's company. The fraudulent website illegally uses the Complainant's founders' profiles, photos, company trademarks, logos, media and other materials.

The Complainant discovered on May 9, 2020 that the hijacked website <https://www.angesensor.com/> had been operating for several weeks.

The Domain Name has obviously been hijacked due to its high SEO value, including mentions of the Complainant's Angel Sensor product on techcrunch.com, wsj.com, 500.co, angel.co and other technology and health-related websites.

The current operator of angelsensor.com purports to be associated with the Complainant and to issue medical/health advice in its name.

The fake website is used to promote dubious medical products (e.g. "testosterone boosters"), in the name of the Complainant's founders and in the guise of the Complainant's company.

The fraudulent website illegally uses the Complainant's founders' profiles, photos, company trademarks, logos, media and other materials to give the impression that it is associated with the Complainant.

- **Respondent**

The Respondent did not submit a response.

#### **4. DISCUSSION AND FINDINGS**

##### **Preliminary issue**

Under the first element of Paragraph 4 of the Policy, the Complainant does not need to prove that it has rights in a trademark or service mark that was used, filed or registered at an earlier date than the Domain Name registration. In fact, the filing/priority date, date of registration, and date of claimed first use are not considered relevant to the first element test. These factors may however bear on a panel's further substantive determination under the second and third elements.

The Complainant's U.S. registered trademark No. 4,899,192 was filed on July 24, 2014, whereas the Domain Name details provided by the Registrar on September 26, 2020, which list the Respondent as its registrant, give March 1, 2013 as the creation date of the Domain Name and May 4, 2020 as a date of update of the same. Despite this, it is not clear from the documents available when and how the Respondent acquired the Domain Name (i.e. March 1, 2013 or sometime in 2020). In fact, according to the Complainant's assertions the Domain Name was previously registered under its name for several years, and, owing to a technical error of name.com, it was not automatically renewed and an unidentified third party hijacked it and registered it on godaddy.com.

The Complainant further asserts that it discovered only on May 9, 2020 that the hijacked website <https://www.angelsensor.com/> had been operating for several weeks. This led the Complainant to assume that the Respondent acquired the Domain Name well after March 1, 2013 (i.e. several years after).

These assertions, which are not properly documented by the Complainant, were not refuted by the Respondent. If they were unfounded, the Respondent could have easily refuted them.

The Complainant has however documented that it has filed several complaints to address this problem and has asked to transfer the Domain Name back to the Complainant. In fact, with these complaints the Complainant has informed name.com, godaddy.com (the Registrars involved), the Internet Crime Complaint Center and the Israeli police.

Therefore the Panel, owing to all the Complainant's assertions and documents on the one hand and the silence of the Respondents on the other, accepts the Complainant's contentions that the Domain Name was previously registered under the Complainant's name, and that the Complainant used it for several years until a third party (i.e. the Respondent) hijacked it and registered it on godaddy.com.

In order to dissipate any doubts and in the interests of the parties, the Panel has determined that in the particular circumstances of this case it is reasonable for it to undertake limited factual research restricted to visiting the Internet Archive ([www.archive.org](http://www.archive.org)) in order to obtain an indication of how the Domain Name has been used in the relevant past and by whom, and the Panel has thus verified that the website [www.angelsensor.com](http://www.angelsensor.com), before it was acquired by the Respondent, had indeed been used and controlled by the Complainant for several years.

In accordance with Paragraph 4 of the Policy, the onus is on the Complainant to prove:

- 1) That the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- 2) That the Respondent has no rights or legitimate interests in the Domain Name; and
- 3) That the Domain Name has been registered and is being used in bad faith.

To consider each of these requirements in turn.

**1) That the Domain Name is Identical or Confusingly Similar to a Mark in which the Complainant has Rights**

The Complainant has established rights in the ANGEL SENSOR trademark by documenting to be the owner of US trademark ANGEL SENSOR registration No.4,899,192 filed on July 24, 2014 and registered on February 9, 2016

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The Domain Name is clearly identical to the Complainant's ANGEL SENSOR trademark, save for the ".com" generic Top-Level Domain ("gTLD").

Owing to the fact that the gTLD is generally disregarded under the test for confusing similarity for the purposes of the Policy, the Panel finds that the disputed domain name is identical to the ANGEL SENSOR trademark in which the Complainant has rights.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

## **2) That the Respondent has No Rights or Legitimate Interest in the Domain Name**

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. The Respondent has no connection to or affiliation with the Complainant, and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark. The Respondent does not appear to be making any legitimate noncommercial or fair use of the Domain Name, nor any use in connection with a bona fide offering of goods or services. In addition, the Respondent does not appear to be commonly known by the name "ANGEL SENSOR" or by a similar name. Moreover, the Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the Domain Name.

The Complainant has submitted evidence that the Domain Name has been used (at least for some time) for a website that illegally uses the Complainant's founders' profiles, photos, company trademarks, logos, media and other materials to give the impression that it is associated with the Complainant. This use of a domain name to capitalize on the reputation and goodwill of the Complainant's trademark or to otherwise mislead internet users does not represent a *bona fide* offering of goods or services or any legitimate noncommercial or fair use of the Domain Name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

## **3) That the Respondent has Registered and Used the Domain Name in Bad Faith**

The Panel, on the basis of the evidence presented, accepts and agrees with the Complainant's contentions that the Domain Name was registered in bad faith and has been used in bad faith.

Particularly relevant are the Complainant's unchallenged assertions (which the Panel accepts and partially reports below) that:

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- The Domain Name has been hijacked;
- The current operator of angelsensor.com, i.e. the Respondent (for some time and until the commencement of the proceeding) has purported to be associated with the Complainant and to issue medical/health advice in its name;
- The Respondent's website has been used to promote medical products (e.g. "testosterone boosters") under the name of Complainant's founders and in the guise of Complainant's company;
- The Respondent's website has illegally used Complainant's founders' profiles, photos, company trademarks, logos, media and other materials to give the impression that it is associated with the Complainant;

The Panel finds that all the above qualifies as bad faith registration and use under paragraph 4(b)(iv) of the Policy, i.e.: *by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location.*

The Panel further notes that, given the above use of the Domain Name and related website, the Respondent could not have been unaware of the existence of the Complainant's trademarks when registering the Domain Name.

Finally, given the evidence of the Complainant's prior use of the Domain Name for an extensive period of time, the timing of the registration of the Domain Name with apparent knowledge of the Complainant's trademark and prior use of the Domain Name, and other inferences of the lack of the Respondent's *bona fides*, the Panel finds that Complainant has satisfied the third requirement that the Respondent has registered and is using the Domain Name in bad faith, under paragraph 4(a)(iii) of the Policy.

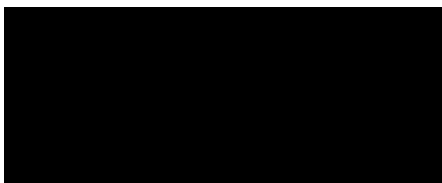
### **DECISION and ORDER**

For the above reasons, in accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Panel orders that the Domain Name be transferred to the Complainant.

Made as of November 4, 2020.

SIGNATURE OF PANEL

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Fabrizio Bedarida

