

## **ADMINISTRATIVE PANEL DECISION**

Tinder, Incorporated v. Super Privacy Service c/o Dynadot / WhoisGuard Protected, WhoisGuard, Inc. / Jennifer Lopez, SI Marketing LLC / David Miller  
Case No. D2016-1610

### **1. The Parties**

The Complainant is Tinder, Incorporated of Dallas, Texas, United States of America (“United States”), represented by Locke Lord LLP, United States.

The Respondents are Super Privacy Service c/o Dynadot of San Mateo, California, United States / WhoisGuard Protected, WhoisGuard, Inc. of Panama, Panama / Jennifer Lopez, SI Marketing LLC of Guaynabo, Puerto Rico, Unincorporated Territory of the United States / David Miller of Miami, Florida, United States.

### **2. The Domain Names and Registrars**

The disputed domain names <tinder-background.com>, <tinderbgcheck.com>, <tinder-checking.com>, <tinder-checks.com>, <tinder-datecheck.com>, <tinderdatechecker.com>, <tinderdatechecking.com>, <tinderdatechecks.com>, <tinderdatecode.com>, <tindermatchchecks.com>, <tindermatchchk.com>, <tinder-vcode.com>, <tinderverification.com> are registered with Dynadot, LLC.

The disputed domain name <tindersafe.site> is registered with NameCheap, Inc.

The disputed domain name <tinderverifications.com> is registered with eNom, Inc.

Dynadot, LLC, NameCheap, Inc. and eNom, Inc. will be collectively referred to as the “Registrars”.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 5, 2016. On August 8, 2016, the Center transmitted by email to registrars Dynadot, LLC and NameCheap, Inc. a request for registrar verification in connection with twelve of the disputed domain names, specifically <tinder-checking.com>, <tinder-checks.com>, <tinder-datecheck.com>, <tinderdatechecker.com>, <tinderdatechecking.com>, <tinderdatechecks.com>, <tinderdatecode.com>, <tindermatchchk.com>, <tinder-vcode.com>, <tinderverification.com>, <tindersafe.site> and <tinderbgcheck.com>.

On August 9, 2016, Dynadot, LLC transmitted by email to the Center its verification response confirming that the named Respondent is listed as the registrant for eleven of the names, specifically <tindermatchchk.com>, <tinder-checks.com>, <tinder-checking.com>, <tinderdatechecks.com>, <tinderdatecode.com>, <tinderdatechecking.com>, <tinder-datecheck.com>, <tinderbgcheck.com>, <tinderdatecheck.com>, <tinder-vcode.com> and <tinderverification.com>, and providing the contact details. On August 9, 2016, NameCheap, Inc. transmitted by email to the Center its verification response disclosing registrant and contact information for the twelfth disputed domain name, <tindersafe.site>, which differed from the named Respondents and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 10, 2016 providing the registrant and contact information disclosed by these two registrars, and inviting the Complainant to submit an amendment to the Complaint. On August 15, 2016, the Complainant filed an amended Complaint adding the registrant for <tindersafe.site> as an additional respondent and two further domain names, <tinder-background.com> and <tindermatchchecks.com>.

On August 19, 2016, the Complainant filed a second amended Complaint on August 19, 2016 through which it incorporated a third additional domain name, <tinderverifications.com>, into this proceeding.

On August 19, 2016, the Center transmitted by email to registrar eNom, Inc. a request for registrar verification in connection with this third additional disputed domain name. On August 22, 2016, eNom, Inc. transmitted by email to the Center its verification response disclosing registrant and contact information for this particular domain name which differed from the named Respondents and contact information in the second amended Complaint. On August 24, 2016, the Center sent an email communication to the Complainant providing the registrant and contact information disclosed by this Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant submitted a third amended Complaint on August 29, 2016.

The Center verified that the Complaint and amended Complaints (hereinafter simply referred to as the "Complaint" except where specific reference is made to a specific version of the complaint) satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), 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 Respondents of the Complaint and that this proceeding commenced on August 30, 2016. In accordance with the Rules, paragraph 5, the Center set the due date for the Response to September 19, 2016. The Respondent submitted an informal email communication, constituting a settlement proposal, to the Center on September 15, 2016, but did not submit a formal Response. The Complainant through its subsequent email communication to the Center of September 26, 2016 rejected this proposal and requested that the proceeding continue. Accordingly, the Center then notified the Parties on September 26, 2016 of the commencement of the panel appointment process.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on October 3, 2016. 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**

As reflected in the registration records for the disputed domain names in the public WhoIs database, these names were registered and will expire on the corresponding dates, respectively, as follows:

- 1) <tinder-background.com>: June 26, 2016 and June 26, 2017;
- 2) <tinderbgcheck.com>: June 12, 2016 and June 12, 2017;

- 3) <tinder-checking.com>: June 22, 2016 and June 22, 2017;
- 4) <tinder-checks.com>: June 21, 2016 and June 21, 2017;
- 5) <tinder-datecheck.com>: June 21, 2016 and June 21, 2017;
- 6) <tinderdatechecker.com>: June 22, 2016 and June 22, 2017;
- 7) <tinderdatechecking.com>: June 19, 2016 and June 19, 2017;
- 8) <tinderdatechecks.com>: May 19, 2016 and May 19, 2017;
- 9) <tinderdatecode.com>: June 24, 2016 and June 24, 2017;
- 10) <tindermatchchecks.com>: June 20, 2016 and June 20, 2017;
- 11) <tindermatchchk.com>: June 21, 2016 and June 21, 2017;
- 12) <tinder-vcode.com>: June 29, 2016 and June 29, 2017;
- 13) <tinderverification.com>: May 17, 2016 and May 17, 2017;
- 14) <tindersafe.site>: May 19, 2016 and May 19, 2017; and
- 15) <tinderverifications.com>: August 8, 2016 and August 8, 2017.

### **A. The Complainant's TINDER Mark**

As indicated in the Complaint, the Complainant owns a United States trademark registration for the word TINDER in block letters. The Complainant has provided, in Annex 18 to the Complaint, a copy of its United States registration certificate for this mark, the details of which are:

TINDER

United States Registration No.: 4,479,131

Registered: February 4, 2014; filed: August 2, 2012

This mark is registered for use in connection with: "Downloadable software in the nature of a mobile application for Internet-based dating and matchmaking; downloadable software in the nature of a mobile application in the field of social media, namely, for sending status updates to subscribers of web feeds, uploading and downloading electronic files to share with others" all in international class 9. The registration indicates that both first use of the mark in conjunction with these goods and first use in commerce commenced as of August 2, 2012.

### **B. The Parties' Activities**

Since at least as early as 2012, the Complainant has provided online dating services under its TINDER Mark.

The Complainant's website at <gotinder.com> is interactive. The website allows users to, among other things, download the Complainant's iOS or Android mobile applications (the "Tinder App"). The Tinder App provides the bulk of Tinder's dating services as it allows a user to discover potential candidates within a certain distance of that user. As reflected in an article from *DMR* (formerly "Digital Marketing Ramblings") provided in Annex 19 to the Complaint, the Tinder App and the TINDER Mark are well known worldwide as the Tinder App – which bears the TINDER mark – has been downloaded 100 million times and had an estimated 50 million users as of March 2, 2015, with sixty percent of those users located outside North America. Annually since 2012, the Complainant has spent and continues to spend substantial sums to advertise and promote its online dating services and the Tinder App.

As of August, 2016, each of the disputed domain names directed Internet users to the Respondents' website at <tindersafe.site> (print-outs of the home page and successive pages at this site appear in Annex 22 to the Complaint). This site apparently enables each such user to become a "verified" Tinder user for "safe dating" purposes, noting that the "process is important and is to protect our users from meeting potentially underage people." Through use of an online verification form, the user is requested to verify, him/herself. Specifically, the pages state: "We verify that you are in fact over the age of 18" and "We perform a soft background check looking for any major red flags to protect our members." These pages prominently display graphics composed of the TINDER Mark and the phrases "t advisor verification system," "Tinder Safe Dating" and "Tinder Verify! Age Verification / Background Check (FREE)." Through the verification process, the

Respondents' website seeks personal user information and "secure age verification" in the form of credit card details, and then opts verified users into a "Special FREE Bonus Offer" of trial memberships to erotic video and adult webcam sites. The Respondents then charge each verified user for these memberships if the user does not cancel the free trial within the specified period of time. Neither any of the Respondents nor their website has any connection to the Complainant.

Currently, the disputed domain names resolve to error pages, registrar landing pages, or parking pages with sponsored links to third-party sites.

## **5. Parties' Contentions**

### **A. Complainant**

#### **(i) Identical or Confusingly Similar**

The Complainant contends that each of the disputed domain names is confusingly similar to its TINDER Mark.

Specifically, each of the names includes the term TINDER followed by one or more textual terms, which include generic words and, also, in some cases, letter groups, with none of the added terms being capable of imparting sufficient distinctiveness whatsoever to the name to mitigate any resulting user confusion between that name and the Complainant's mark. These terms include: "background", "bg check", "checking", "checks", "date check", "date checking", "date code", "match checks", "match chk", "safe", "vcode", and "verification" and "verifications".

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

#### **(ii) Rights or Legitimate Interests**

The Complainant contends that the Respondent has no rights or legitimate interests in any of the disputed domain names pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy.

Specifically, the Complainant is not affiliated with and does not have any relationship or connection with any of the Respondents.

Further, the Respondents' use of the names is not a *bona fide* offering of goods or services pursuant to paragraph 4(c)(i) of the Policy. In particular, the Respondents use each of the names as a vehicle which, through the illicit use of the Complainant's TINDER Mark, deceptively suggests to Internet users that a relationship, affiliation or endorsement exists between the Complainant and the Respondents when, in fact, it does not, with the deception then being used to drive those users to the Respondents' website to sign up for erotic video and adult webcam memberships through which the Respondent receives commercial gain. Such a use, which is purely commercial in nature, is also not a legitimate noncommercial or fair use of any of the names without intent for commercial gain, thus failing to qualify under paragraph 4(c)(iii) of the Policy.

Consequently, the none of the Respondents satisfies any of one of paragraphs 4(c)(i)-(iii) of the Policy, and thus all of the Respondents have no rights or legitimate interests in any of the disputed domain names under paragraphs 4(a)(ii) and 4(c) of the Policy.

#### **(iii) Registered and Used in Bad Faith**

The Complainant also contends that the Respondents have registered and are using each of the disputed domain names in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Specifically, as each of the names contains the mark in its entirety, the Respondents clearly intended to and did misappropriate the Complainant's TINDER Mark to deceive Internet users into drawing an improper association between the Respondents and the Complainant, namely that a relationship of some sort exists between the parties -- through affiliation, sponsorship or endorsement, when, in fact, it does not. The Respondents then relied on that deception to divert those users to its website through which the Respondents ultimately solicited those users to purchase, on a paid membership basis, access to adult-themed services for the Respondents' own commercial gain. This constitutes bad faith registration and use under paragraph 4(b)(iv) of the Policy.

Further, the Respondents or the person/entity which ultimately commonly controls all the disputed domain names has continued infringing the Complainant's exclusive rights in its TINDER Mark notwithstanding prior notification of that infringement. For example, the original Complaint in this proceeding was filed on August 5, 2016. The disputed domain name <tinderverifications.com>, which also completely incorporates the Complainant's TINDER Mark, was created only three days later on August 8, 2016 by another registrant -- as evident in the Whois record provided in Annex 25 to the Complaint. Accordingly, it is apparent that the Respondents or that person/entity which commonly controls the disputed domain names intends to continue infringing the Complainant's trademark rights to the Complainant's detriment. The changing of the registrant also suggests that the Respondents or that person/entity is attempting to mask its illicit activities. This action, particularly in light of their continuing infringement of the Complainant's trademark rights, reflects bad faith under paragraph 4(b) of the Policy.

## **B. Respondent**

Though the Respondent submitted a settlement proposal concerning one of the disputed domain names, <tindersafe.site>, it did not file a Response to the Complaint as required under paragraph 5 of the Rules.

Consequently, in view of the lack of such a Response, this administrative proceeding continued by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel decided this proceeding on the basis of the Complainant's undisputed factual allegations which the Panel finds are not inherently implausible.

## **6. Discussion and Findings**

### **A. Consolidation**

The Complainant, through its email correspondence to the Center dated August 10, 2016 sought permission to amend its original Complaint to add two additional domain names, <tinder-background.com> and <tindermatchchecks.com>, to the present proceeding based on commonality of the parties and issues involving these additional names to those, respectively, involving the twelve names set forth in the original Complaint. The Center approved this request through an email message of the same date to the Complainant. Consequently on August 15, 2016, the Complainant filed its first amended Complaint which included these two additional names.

Subsequently on August 19, 2016, the Complainant filed a second amended Complaint. Through the second amended Complaint, the Complainant added a third domain name, <tinderverifications.com>, to this proceeding again based on the same commonality of parties and issues involved, and requested, for essentially the same reasons it requested the addition of the first two additional names into the present proceeding, that this third additional name also be consolidated into this proceeding. Through its email message dated August 30, 2016, the Center reserved a final decision on this latest consolidation request to the Panel upon its appointment.

Pursuant to paragraph 3(c) of the Rules and in accordance with paragraph 10(e) of the Rules, consolidation of multiple domain name disputes is appropriate where the disputed domain names are registered by the same domain-name holder, or there are indicia of common control of the disputed domain names, and if

consolidation would be equitable and procedurally efficient. See *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. D2010-0281. The Panel finds that on the record before it, the Complainant has sufficiently demonstrated that the disputed domain names are subject to common control, and with no rebuttal from the Respondent. The Complainant noted that the disputed domain names all wholly incorporate the Complainant's mark, that the majority were registered by the same Registrar, and, as evidenced in Annex 22 to the Complaint, the disputed domain names resolved to the same website at the <tindersafe.site> domain name, or websites linked to <tindersafe.site>. It is also apparent that the disputed domain names currently resolve to error pages, registrar landing pages, or parking pages with sponsored links to third-party sites, as if to hide the prior use of the disputed domain names. It would also be equitable and procedurally efficient to permit consolidation. In the interests of advancing administrative efficiency, namely reducing time and cost through eliminating unnecessary and duplicative proceedings that would likely otherwise arise, the Panel grants the Complainant's request to consolidate the third additional domain name into this proceeding and also affirms the approval previously provided by the Center to the Complainant to consolidate the first two additional names into this proceeding.

## **B. Identical or Confusingly Similar**

The Panel finds that each of the disputed domain names is confusingly similar to the Complainant's TINDER Mark.

From a simple comparison of each of the disputed domain names to the Complainant's TINDER Mark, no doubt exists that the disputed domain names are confusingly similar to it. The disputed domain names consist of the mark to which terms consisting of short letter groups and/or generic words have been appended in order to yield a composite term to which the generic Top-Level Domain ("gTLD") ".com" or ".site" has been added. The addition of the gTLD is irrelevant in this case in assessing confusing similarity or identity under paragraph 4(a)(i) of the Policy and thus ignored.

It is now very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation to a mark is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. Here, the Respondents' addition of the terms: "background", "bg check", "checking", "checks", "date check", "date checking", "date code", "match checks", "match chk", "safe", "vcode", and "verification" and "verifications" to the Complainant's TINDER Mark clearly resulted in such minor variations. See, e.g., *Chicago Mercantile Exchange Inc. and CME Group Inc. v. Domains By Proxy, LLC / Phupinder Gill*, WIPO Case No. D2015-1842; *Cummins Inc. v. Jamie Lent*, WIPO Case No. D2015-0188; *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, WIPO Case No. D2013-1687; *Forideas Pty Limited v. Movember Organization*, WIPO Case No. D2013-1385; *AlgaeCal Inc. v. AlgaeCal Fraud*, WIPO Case No. D2013-1248; *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106; *National Westminster Bank plc v. Steve Mart*, WIPO Case No. D2012-1711; *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *National Association of Realtors v. Hammerberg & Associates, Inc.*, WIPO Case No. D2012-0075.

Therefore, the Panel finds that each of the disputed domain names is confusingly similar to the Complainant's mark. Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

## **C. Rights or Legitimate Interests**

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim of rights or legitimate interests by any of the Respondents to any of the disputed domain names under paragraph 4(c) of the Policy.

The Complainant has never authorized any of the Respondents to utilize the Complainant's TINDER Mark or a mark confusingly similar to it, at least for the services for which the Complainant has registered and uses the TINDER Mark, nor does the Complainant have any relationship, affiliation or connection whatsoever with any of the Respondents.

This Panel finds, based on the record before it, that the Respondents, when they registered each of the disputed domain names, were well aware of the Complainant, its mark TINDER and the Complainant's exclusive rights in that mark, and the substantial reputation of and the goodwill inherent in that mark. Yet, in spite of that knowledge, the Respondents intentionally registered each of the names and use each such name to redirect Internet users to the Respondents' own website. At that site, the users are first solicited to undergo a verification process, after which those users are then solicited to sign up for paid erotic video and adult webcam memberships. The Respondents financially benefit from the sale of these memberships. This use, which specifically relies on exploiting confusion of Internet viewers, by causing them to think that a relationship of some sort exists between the parties when, in fact, it does not, in order to divert business to the Respondents and away from the Complainant to its financial detriment, is not a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy.

The record before the Panel is simply devoid of any evidence which proves that any of the Respondents actually acquired any recognition in the marketplace to become commonly known by any of the disputed domain names or a name similar to it. Given the exclusive trademark rights that reside in the Complainant and the reputation now inherent in its mark TINDER both through registration and prior use, none of the Respondents could legitimately acquire any public association between itself and the Complainant's mark or even any mark similar thereto, at least for the services provided by the Complainant under its mark or one sufficiently similar thereto. This is so in light of the Complainant's exclusive trademark rights which predate by some four years the May-August 2016 timeframe during which the Respondents registered all the disputed domain names. See, e.g., *TPI Holdings, Inc. v. Nikhil Jerath, Linxworks Solutions, LLC*, WIPO Case No. D2016-1334; *Dubizzle Limited BVI v. Rana Anabtawi*, WIPO Case No. D2016-0843; *Philip Morris USA Inc. v. Daniele Kanai, iKiss LLC*, WIPO Case No. D2015-1527; *Valero Energy Corporation and Valero Marketing and Supply Company v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 62520014085963*, WIPO Case No. D2015-0787; and *Chicago Mercantile Exchange Inc., Cummins Inc., Staatliche Porzellan-Manufaktur Meissen, Forideas, and National Westminster Bank*, all cited *supra*. As such, none of the Respondents could not likely become commonly known by any of the disputed domain names or the Complainant's mark for any of the services which are either identical or sufficiently similar to those listed on the Complainant's trademark registration or with which the Complainant uses its mark without infringing on the exclusive trademark rights of the Complainant. Hence, the Respondents do not fall within paragraph 4(c)(ii) of the Policy.

Lastly, the Respondents' use of any of the disputed domain names clearly does not constitute either a noncommercial or fair use under paragraph 4(c)(iii) of the Policy.

As such, based on the evidence presently before the Panel, none of the Respondents falls within any of the circumstances listed in paragraph 4(c)(i)-(iii) of the Policy. Also, there is simply no evidence that any of the Respondents has acquired, through any other means, any rights or legitimate interests in any of the disputed domain names.

Accordingly, the Panel concludes that none of the Respondents has any rights or legitimate interests in any of the disputed domain names within paragraph 4(a)(ii) of the Policy.

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

The Panel finds that the Respondents' actions, with respect to the disputed domain names, constitute bad faith registration and use.

The Panel infers, particularly from the lack of any Response, that it is likely that the Respondents were well aware of the Complainant, its substantial reputation and goodwill in its mark TINDER and the exclusive rights which the Complainant then had in that mark when the Respondents registered each of the disputed domain names. Yet, in spite of that knowledge and in the absence of any authority to do so from the Complainant, the Respondents intentionally registered each of the names for their ability to cause confusion with the Complainant's TINDER mark. In that regard, the Respondents very likely believed that Internet users, who sought the Complainant's website and were familiar with the Complainant's mark would be confused, upon

entering each name into their browsers, by the similarity between the name and the mark -- inasmuch as each name incorporates the mark in its entirety, and consequently assume that a relationship of some sort exists between the parties, possibly a sponsorship, affiliation or endorsement of the Respondents' website by the Complainant, when no such relationship exists at all. To subsequently exploit that confusion, the Respondents deliberately used each of the names to redirect Internet traffic to its own website through which it offers paid memberships for access to certain adult-themed services. Doing so likely diverts Internet traffic away from the Complainant's website, for which that traffic was otherwise destined, to the Respondents' website instead and consequently deprives the Complainant of resulting business, that might have otherwise arisen from that traffic, to its ultimate financial detriment. This conduct is a clear violation of paragraph 4(b)(iv) of the Policy.

That the disputed domain names now resolve to error pages, registrar landing pages, and parking pages with sponsored links to third-party sites does not shield the Respondent from a finding of use in bad faith. Given the complete inclusion of the Complainant's TINDER mark into the disputed domain names, and the Complainant's exclusive rights in its TINDER mark, the only legitimate purchaser and user of the disputed domain names which would avoid source confusion is the Complainant itself. It is reasonable for the Panel to infer based upon the facts of record and previous use of the disputed domain names that if the Respondent were to retain the disputed domain names, it may again exploit Internet users' confusion to disrupt the Complainant's business by restoring the content previously hosted on the disputed domain name websites, or by continuing to hold the domain names in order to sell or transfer them for profit to third parties. In any event, the Panel finds that passive holding of the disputed domain names, or use of the disputed domain names to resolve to parking pages with links to sponsored third-party sites also amount to use in bad faith.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations, with respect to all of the disputed domain names, to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

## **7. Decision**

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant. All the disputed domain names, specifically <tinder-background.com>, <tinderbgcheck.com>, <tinder-checking.com>, <tinder-checks.com>, <tinder-datecheck.com>, <tinderdatechecker.com>, <tinderdatechecking.com>, <tinderdatechecks.com>, <tinderdatecode.com>, <tindermatchchecks.com>, <tindermatchchk.com>, <tindersafe.site>, <tinder-vcode.com>, <tinderverification.com>, and <tinderverifications.com>, are to be transferred to the Complainant.

**Peter L. Michaelson**

Sole Panelist

Date: October 13, 2016