

ADMINISTRATIVE PANEL DECISION

CVS Pharmacy, Inc. v. Domains By Proxy, LLC / Domain Privacy, Above.com
Domain Privacy
Case No. D2022-0277

1. The Parties

The Complainant is CVS Pharmacy, Inc., United States of America (“United States” or “U.S.”), represented by The GigaLaw, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Domains By Proxy, LLC, United States / Domain Privacy, Above.com Domain Privacy, Australia.

2. The Domain Name and Registrar

The disputed domain name <cvshyealth.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2022. On January 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 28, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 3, 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 February 4, 2022.

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 February 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 2, 2022. The Respondent sent an informal email communication on February 15, 2022. The Center informed the Parties of its commencement of Panel appointment on March 3, 2022.

The Center appointed George R. F. Souter as the sole panelist in this matter on March 7, 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

The Complainant, a U.S. company, is the principal operating company of CVS Corporation, with an annual revenue of USD 268.7 billion in 2020. It employs approximately 300,000 workers in more than 9,900 retail locations, and approximately 1,100 walk-in clinics in 49 states of the U.S., serving 4.5 million customers daily.

The Complainant is the proprietor of more than 500 trademark registrations in at least 27 countries, including U.S. registration number 919941 in respect of its CVS trademark, registered on September 7, 1971, and U.S. registration number 5,055,141 in respect of its CVS HEALTH trademark, registered on October 4, 2016.

The disputed domain name was registered on January 18, 2022 and, *inter alia*, resolves to a monetarised website containing pay-per-click links to offerings of services competing with those of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its CVS and CVS HEALTH trademarks, containing these trademarks in their entirety, with a non-distinctive additional element.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that it has never granted permission to the Respondent to use its trademarks in connection with the registration of a domain name, or otherwise.

The Complainant alleges that the disputed domain name was registered in bad faith, and is being used in bad faith.

B. Respondent

The Center was informed that the Respondent "does not wish to contest the Complaint", and the Respondent did not submit a formal response to the Complaint.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name be transferred to the Complainant:

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

A. Identical or Confusingly Similar

The Panel finds that the Complainant has sufficient trademark rights to its CVS and CVS HEALTH trademarks for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level Domain (“gTLD”) may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the gTLD “.com” to be irrelevant in the circumstances of the present case, and finds that it may be disregarded here.

The Complainant’s CVS and CVS HEALTH trademarks are clearly recognizable in the disputed domain name, rendering the disputed domain name confusingly similar to the Complainant’s trademarks, and the misspelling of the word “health” is inconsequential, and does not prevent a finding of confusing similarity, and the Panel so finds.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain name at issue.

B. Rights or Legitimate Interests

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

Furthermore, the nature of the disputed domain name, incorporating the Complainant’s well-known CVS and an additional related term with misspellings indicates an awareness of the Complainant and its mark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy, in connection with the disputed domain name.

C. Registered and Used in Bad Faith

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstance of the present case, in which the Panel regards it as self-evident that the Complainant’s CVS and CVS HEALTH trademarks were deliberately appropriated in the disputed domain name are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain name and so finds.

It is well-established in prior decisions under the Policy that the use of a disputed domain name in connection with a website facilitating the offer of services competing with those of the complainant constitutes use of the disputed domain name in bad faith, and the Panel so finds in the circumstances of the present case.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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, <cvshyealth.com>, be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: March 21, 2022