

ADMINISTRATIVE PANEL DECISION

Grafine Partners v. Privacy service provided by Withheld for Privacy ehf /
kelvin yusuf, kelvinwebpro
Case No. D2022-1983

1. The Parties

Complainant is Grafine Partners, United States of America (“United States”), represented by Kirkland & Ellis, United States.

Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / kelvin yusuf, kelvinwebpro, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 1, 2022. On June 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 1, 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 Complainant on June 3, 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 June 8, 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 Respondent of the Complaint, and the proceedings commenced on June 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2022. Respondent sent informal communications to the Center on June 9, 2022, June 15, 2022, and on June 27, 2022. Respondent did not submit any formal response. Accordingly, the Center notified the parties that it would proceed to panel appointment on July 26, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on August 5, 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

Complainant is a majority women-led alternative investment management firm based in New York and created to meet the needs of sophisticated institutional investors seeking innovative approaches to invest in private capital. Complainant owns a valid and subsisting registration for the GRAFINE trademark in the United States (Reg. No. 5,901,703) with the earliest priority dating back to May 8, 2018.

Respondent registered the disputed domain name on August 23, 2021. Prior to the filing of this Complaint, the disputed domain name resolved to a website ostensibly promoting “Grafine Capital Asset Management” which purported to offer investment services and encouraged visitors to register for an investment account in order to “add funds” under the promise they would “receive stable dividends.” Respondent’s website also falsely listed Complainant’s physical address as its own. At the time this Complaint was filed, the disputed domain name no longer resolved to any website content, likely as a result of Complainant’s intervening May 13, 2022 abuse report to the Registrar.

5. Parties’ Contentions

A. Complainant

Complainant asserts ownership of the GRAFINE trademark and has adduced evidence of trademark registration in the United States, with earliest priority dating back to May 8, 2018. The disputed domain name is confusingly similar to Complainant’s GRAFINE trademark, according to Complainant, because: the dominant portion of the disputed domain name incorporates Complainant’s GRAFINE trademark in its entirety; and the generic term “capital” and “.org” generic Top-Level Domain (“gTLD”) do not remedy the confusing similarity, where “capital” is merely a common financial term used by companies like Complainant to describe its services.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: Respondent’s passive holding of the disputed domain name since on or about May 16, 2022; Respondent’s prior website, which copied large swaths of text verbatim from websites of other investment firms and falsely listed Complainant’s address as its own; Respondent’s lack of any trademark registration or rights in the term “Grafine”; the lack of any evidence that Respondent is known by the term “Grafine”; and the lack of any authorization or business relationship between Complainant and Respondent.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: Respondent’s constructive notice of Complainant’s GRAFINE trademark, registration of which preceded Respondent’s registration of the disputed domain name by more than three years; Respondent’s use of the disputed domain name in connection with Respondent’s website, which incorporates Complainant’s GRAFINE trademark in full, claims Complainant’s physical address as its own, and purports to offer similar investment services as Complainant; Respondent’s use of Respondent’s website in furtherance of an illegal phishing scheme to obtain user sensitive financial data; the distinctive and fanciful nature of Complainant’s GRAFINE trademark; and Respondent’s use of a proxy registration service to conceal its identity.

B. Respondent

Respondent did not submit a formal Response to Complainant’s contentions.

Instead, Respondent sent informal communications to the Center on June 9, 2022, June 15, 2022, and on June 27, 2022, stating respectively that: “i dont understand this email, besides the so domain is down, never knew is a trade markt domain i bought it for a client blindly thanks”; “i have no intentions to renew this domain.. i dont want to futher this either, the domain should be handed over to the company please...thanks”; and “we dont have any money to , am not interested in this either, like i said i bought it for my client and we don’t know it trademarked.. i opt in for settle ment form v.”

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Panels typically treat a respondent’s submission of a so-called “informal response” (merely making unsupported conclusory statements and/or failing to specifically address the case merits as they relate to the three UDRP elements, e.g., simply asserting that the case “has no merit” and demanding that it be dismissed) in a similar manner as a respondent default. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), Section 4.3. Indeed, the Panel views Respondent’s submissions, asserting ignorance of Complainant and registration on behalf of an undisclosed customer of Respondent, as akin to a respondent default.

Although Respondent did not reply to Complainant’s contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent’s default would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See [WIPO Overview 3.0](#), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) (“The Respondent’s default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)”).

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the GRAFINE trademark has been registered in the United States with priority dating back to May 8, 2018. Thus, the Panel finds that Complainant’s rights in the GRAFINE trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant’s GRAFINE trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant’s GRAFINE trademark because, disregarding the “.org” gTLD, the trademark is contained in its entirety within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. (“This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar...”). In regards to gTLDs, such as “.org” in the disputed domain name, they

are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The combination with the term “capital” does not prevent a finding of confusing similarity between Complainant’s GRAFINE and the disputed domain name. WIPO Overview, section 1.8 (Additional terms “whether descriptive, geographic, pejorative, meaningless, or otherwise” do not prevent a finding of confusing similarity under the first element”); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) (“Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant’s [ATT trademark]”) *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) (“[T]he addition of the letters ‘hbg’ to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark.”).

In view of Complainant’s registration for the GRAFINE trademark, and Respondent’s incorporation of that trademark in its entirety in the disputed domain name, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1.

It is evident that Respondent, identified by Whois data for the disputed domain name as “kelvin yulsuf kelvinwebpro”, is not commonly known by the disputed domain name or Complainant’s GRAFINE trademark.

UDRP panels have categorically held that use of a domain name for illegal activity — including the impersonation of the complainant, website phishing, and other types of fraud — can never confer rights or legitimate interests on a respondent. Circumstantial evidence can support a credible claim made by Complainant asserting Respondent is engaged in such illegal activity, including that Respondent has masked its identity to avoid being contactable, or that Respondent’s website has been suspended by its hosting provider. [WIPO Overview 3.0](#), section 2.13. See e.g. *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#) (“Respondent has used the domain name to pretend that it is the Complainant and in particular to create false emails pretending that they are genuine emails coming from the Complainant and one of its senior executives”); see also *The Commissioners for HM Revenue and Customs v. Name Redacted*, WIPO Case No. [D2017-0501](#) (“In addition, the disputed domain names ... have had their web hosting suspended as a result of fraudulent activities. This is evidence of bad faith registration and use of the disputed domain names.”) To this end, the second and third elements of the Policy may be assessed together where clear indicia of bad faith suggests that there cannot be any Respondent rights or legitimate interests. [WIPO Overview 3.0](#), section 2.15.

In this case, and as discussed in greater detail in Section C below, Complainant has made a credible claim that Respondent is engaged in an illegal website phishing scheme, specifically through Respondent’s website, which incorporated Complainant’s GRAFINE trademark in full, fraudulently claimed Complainant’s physical address as its own, and purported to offer similar investment services as Complainant in each for users submitting sensitive financial data and depositing funds with Respondent. Most notably, the informal responses offered by Respondent fail to address such facts and allegations. Respondent merely attempts to shift blame to an undisclosed “client” of Respondent.

In view of the absence of any evidence supporting any rights or legitimate interests in the disputed domain name, and Complainant’s credible argument that Respondent’s website merely phishes for sensitive financial data, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

Where parties are both located in the United States and the complainant has obtained a federal trademark registration pre-dating a respondent's domain name registration, UDRP panels have applied the concept of constructive notice, subject to the strength or distinctiveness of the complainant's trademark, or circumstances that corroborate respondent's awareness of the complainant's trademark. [WIPO Overview 3.0](#), section 3.2.2. In this Panel's view, when the disputed domain name was registered on August 23, 2021, Respondent had constructive knowledge of Complainant's pre-existing rights in Complainant's GRAFINE trademark under United States law. See e.g., *Champion Broadcasting System, Inc. v. Nokta Internet Technologies*, WIPO Case No. [D2006-0128](#) (Applying the principle of constructive notice where both parties are located in the United States). Indeed, circumstances in this case corroborate Respondent's awareness of Complainant and Complainant's GRAFINE trademark, including *inter alia* Respondent's website, which misappropriated Complainant's GRAFINE trademark as the dominant portion of its own "Grafine Capital Asset Management" moniker and fraudulently listed Complainant's physical address as its own.

In addition, wrongful use of third-party trademarks to extort personal and sensitive financial information from unsuspecting and unwary people, by using the disputed domain name for website phishing activity, is considered abusive registration of the disputed domain name under the Policy. See *CareerBuilder, LLC v. Stephen Baker*, WIPO Case No. [D2005-0251](#); *The Boots Company, PLC v. The programmer adviser*, WIPO Case No. [D2009-1383](#). See e.g. *WSI Holdings Ltd. v. WSI House*, Case No. [D2004-1089](#) ("Respondent appears to be engaged in "phishing" for mistaken potential employees of the Complainant ... Respondent (1) has adopted a confusingly similar domain name, (2) it has used the trade dress of the Complainant's website, and (3) it has sought to attract users to its site by creating confusion between its site and the Complainant's. It has clearly engaged in activity which fulfils the bad faith requirements of Paragraph 4(b)(iv) of the Policy.") In this Complaint, Complainant has provided strong evidence supporting the conclusion that Respondent is engaged in an illegal website phishing scheme. Significantly, Complainant provided independent third-party scam analyses of Respondent's website, which concluded among other things that "GrafineCapital is ... running a scam ... [It] immediately raised some red flags for us—the only companies that claims daily returns are scammers" and "GrafineCapital is not licensed in any capacity."

Furthermore, where it appears that a respondent employs a privacy or proxy service merely to avoid being notified of a UDRP proceeding filed against it, UDRP panels tend to find that this supports an inference of bad faith. WIPO Overview section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement efforts by a legitimate complainant demonstrates

bad-faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct). In this Complaint, based on the totality of the circumstances, including Respondent's targeting of Complainant and Respondent's fraudulent use of Complainant's physical address as its own, it is apparent Respondent sought to obfuscate its identity and frustrate Complainant's enforcement efforts.

Respondent's website was deactivated following a takedown request to the Registrar from Complainant absent any attempt by Respondent to explain or justify its use of the disputed domain name. The Panel takes this as corroborating evidence of Respondent's bad faith. *LEGO Juris A/S v. Ammar Briouel / Brahim Mahjoubi*, WIPO Case No. [D2019-0750](#) (involving website suspension following a takedown request by Complainant).

In view of the foregoing, the Panel concludes that Complainant has established 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 <grafinecapital.org> be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: August 29, 2022