

## **ADMINISTRATIVE PANEL DECISION**

Tivity Health, Inc. v. Privacy service provided by Withheld for Privacy ehf /  
Name Redacted

Case No. D2022-2103

### **1. The Parties**

The Complainant is Tivity Health, Inc., United States of America (“United States”), represented by Foley & Lardner, United States.

The Respondent’s name has been redacted for reasons explained below.

### **2. The Domain Name and Registrar**

The disputed domain name <tivityhealth.careers> 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 8, 2022. On June 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 10, 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 June 16, 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 June 17, 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 June 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 14, 2022.

The Center appointed William F. Hamilton as the sole panelist in this matter on July 19, 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 is in the business of providing health improvement, fitness, and social engagement solutions. The Complainant is headquartered in Franklin, Tennessee.

The Complainant owns numerous registrations for the mark TIVITY HEALTH (the “Mark”) with the United States Patent and Trademark Office. The earliest registration for the Mark with the United States Patent and Trademark Office is Registration No. 5751760, dated May 14, 2019.

The disputed domain name was registered on May 10, 2022. The disputed domain name does not resolve to an active website.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant asserts the disputed domain name is confusingly similar to the Mark because the disputed domain name is composed of the Complainant’s Mark and the generic Top-Level Domain (“gTLD”) “careers.”

The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, and that the Respondent has never engaged in any *bona fide* commercial activity in connection with the disputed domain name.

The Complainant asserts that the Respondent registered and used the disputed domain name in bad faith as part of a scheme to impersonate an employee of the Complainant and to deceive unsuspecting persons seeking employment with the Complainant.

##### **B. Respondent**

According to the Complainant, the name provided as registrant of the disputed domain name (*i.e.* the Respondent) is the name of an employee of the Complainant working in the Complainant’s recruitment department who has no knowledge of the registration or use of the disputed domain name. Accordingly, the Panel finds that it is appropriate in this proceeding to redact the actual name of the Respondent. *Celgene Corporation v. Name Redacted*, WIPO Case No. [D2016-2151](#); *Blackbaud, Inc. v. Registration Private, Domains By Proxy, LLC / Name Redacted*, WIPO Case No. [D2021-4138](#).

#### **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is identical to the Complainant's Mark.

The disputed domain name is composed of the Complainant's Mark and the gTLD ".careers." A domain name which distinctive features of a complainant's registered mark is sufficient to establish identity or confusingly similarity for the purposes of the Policy when, as here, the Mark comprises the entire disputed domain name other than the gTLD. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8. The generic Top-Level Domain ("gTLD") of the disputed domain name, in this case "careers", is disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1; *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#); *International Business Machines Corporation v. Sledge, Inc. / Frank Sledge*, WIPO Case No. [D2014-0581](#).

The Complainant has met its burden under paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

The Complainant has specifically disavowed providing the Respondent with permission to use the disputed domain name or the Mark. The Respondent is not affiliated with the Complainant in any way and does not have any business relationship with the Complainant. There is no evidence that the Respondent has conducted any *bona fide* business under the disputed domain name or is commonly known by the disputed domain name. *Compagnie de Saint Gobain v. Com-Union Corp.*, WIPO Case No. [D2000-0020](#).

The Complainant has thus established a *prima facie* case in its favor, which shifts the burden of production on this point to the Respondent. The Respondent, however, has failed to come forth with any evidence showing any rights or legitimate interests in the disputed domain name.

Furthermore, the disputed domain name carries a risk of implied affiliation with the Complainant. See [WIPO Overview 3.0](#), section 2.5.1. Indeed, the association of the word "careers" (the disputed domain name's gTLD) with the Complainant's Mark suggests to an unsuspecting Internet user that the disputed domain name is associated with the Complainant. Moreover, it is apparent from the Amended Complaint, that the disputed domain name is being used in connection with a fraudulent scheme to victimize persons who hope to obtain employment with the Complainant.

The facts and circumstances presented to the Panel demonstrate that the Respondent does not have any rights or legitimate interests in the disputed domain name.

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

On the evidence presented, it appears that the disputed domain name has likely been used in connection with a fraudulent scheme to trick unsuspecting Internet users who may be seeking employment with the Complainant. The disputed domain name deceptively associates the gTLD ".careers" with the Complainant's Mark, a unique, coined expression. To enhance the likelihood of success of this deception, the name and business address of a recruitment employee of the Complainant were used when registering the disputed domain name. The Complainant reports that numerous persons have contacted the Complainant regarding non-existent Complainant job listings presumably arising from fraudulent job posting, applications, and other recruitment solicitations utilizing the disputed domain name. The utilization of a disputed domain name in such a scheme is paradigmatic bad faith registration and use. *Pfizer Inc. v. Sarthak Kapoor*, WIPO Case No. [D2019-0292](#); *Desko GmbH v. Mustafa Mashari*, WIPO Case No. [D2015-0817](#).

Moreover, notwithstanding the foregoing, noting the composition of the disputed domain name, it is difficult to conceive of any use that the Respondent might make of the disputed domain name without the Complainant's consent that would not involve bad faith. *Telstra Corporation Limited v. Nuclear Marshmellows*, WIPO Case No. [D2000-0003](#);

*Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#) (“where the reputation of a complainant in a given mark is significant and the mark bears strong similarities to the disputed domain name, the likelihood of confusion is such that bad faith may be inferred”); *DPDgroup International Services GmbH & Co. KG v. Wise One, Wilson TECH*, WIPO Case No. [D2021-0109](#); *Monster Energy Company v. PrivacyDotLink Customer 116709 / Ferdinand Nikolaus Kronschnabl*, WIPO Case No. [D2016-1335](#).

## 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 <tivityhealth.careers> be transferred to the Complainant.

For purposes of properly implementing this decision, the Panel also directs the Registrar’s attention to Annex 1 hereto that identifies the entity listed as registrant of the disputed domain name in the formal record of registration and directs the Center that Annex 1 shall not be published along with this Decision.

*/William F. Hamilton/*

**William F. Hamilton**

Sole Panelist

Date: July 26, 2022