

ADMINISTRATIVE PANEL DECISION

The Clear Fund d/b/a Givewell v. Md saiful islam
Case No. D2022-4450

1. The Parties

The Complainant is The Clear Fund d/b/a Givewell, United States of America (“United States”), represented by Focal PLLC, United States.

The Respondent is Md saiful islam, Bangladesh.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2022. On November 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 2, 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 amended Complaint on December 7, 2022.

The Center verified that the Complaint, together with the amended 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 December 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 29, 2022. The Respondent sent email communications to the Center on December 2, 2022; December 12, 2022; December 18, 2022; January 3, 2023; January 15, 2023; and January 19, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on January 13, 2023. 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 a non-profit organization, located in the United States, which finds and recommends charitable giving opportunities to potentially interested donors. It publishes the results of its analyses in order to assist donors in deciding where to give. Its website allows donors to make their donations online to the Complainant's recommended charities.

The Complainant's trading style is GIVEWELL and it owns a United States service mark registration for this mark, namely registration number 4,040,496, registered on October 18, 2011 in classes 35 and 36. It also owns and operates the domain name <givewell.org>, which resolves to its principal website. This displays the Complainant's GIVEWELL mark, which is presented in a distinctive stylization, with the "GIVE" element in light blue and the "WELL" component in black, and which provides information about the Complainant and its services.

The disputed domain name was registered on August 28, 2022. It has previously resolved to a website which purported to provide essentially the same services to those of the Complainant, as is apparent from the claim on its website that: "We search for the charities that save or improve lives the most per dollar." The "About Us" section of the website claimed: "GiveWell is a nonprofit dedicated to finding outstanding giving opportunities and publishing the full details of our analysis to help donors decide where to give." The Respondent's website featured a very similar representation of the Complainant's stylized GIVEWELL mark, using similar light blue and black coloring. Additionally, it contained such features as a quotation from a newspaper describing it as "The gold standard for giving", brief details of some of the personnel ostensibly operating its website and assurances such as "GiveWell takes no fees and sends your donation to the organization(s) you choose". The disputed domain name does not presently resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to a service mark in which it has rights. The disputed domain name incorporates the Complainant's GIVEWELL mark in its entirety.

The Complainant says also that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent was undoubtedly aware of the Complainant's GIVEWELL mark when the disputed domain name was registered, given the long usage of the Complainant's mark. There is no evidence to support an argument that the Respondent is commonly known by the disputed domain name. The Complainant has never licensed or otherwise authorized the Respondent's use of its GIVEWELL mark in any domain name. Moreover, the evidence of the Respondent's improper commercial use of the disputed domain name refutes any possible claim of a legitimate noncommercial or fair use of the disputed domain name. The Respondent's website blatantly copies content from the Complainant's website and its use of a similar "DONATE NOW" button suggests that the website is an attempt to collect personal information from Internet users for the purposes of a phishing scheme.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. There can be no credible dispute that the Respondent was aware of the Complainant's mark when he registered the disputed domain name and this supports a finding of bad faith registration. The Respondent is using the disputed domain name in order to perpetuate fraud, and it is well established that this is evidence of bad faith use.

B. Respondent

Between December 2, 2022 and January 19, 2023, the Respondent sent several emails to the Center. A number of these emails assert that the Respondent does not understand the procedure under the Policy and that he is looking to the Center for guidance. Additionally, the Respondent's email to the Center dated December 12, 2022 states that: "for this purpose and all for testing data, this is not any business, we will hand over this domain or remove. I don't need this domain, please withdraw your complain [...]." An email sent by him to the Center dated December 18, 2022 claims (without supporting evidence) that: "Finally, this domain is not for me. another person registered by my account, already close there business." For the purposes of this proceeding, the Panel considers the Respondent to be the registrant disclosed by the concerned Registrar, *i.e.* Md saiful islam.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

Section 4.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") deals with the position in which a respondent has given informal consent to the transfer of a domain name outside of the more formal settlement process. It explains that whilst in these circumstances many panels will order the remedy requested by the complainant on the basis of the respondent's consent, in some cases a panel may still find it appropriate to proceed to a substantive page 3 decision on the merits. Section 4.10 explains that scenarios in which a panel may find it appropriate to do so include (i) where the panel finds a broader interest in recording a substantive decision on the merits, notably if there is a pattern of bad faith conduct, (ii) where the respondent has expressly disclaimed any bad faith, (iii) where the complainant has not agreed to accept such consent and has expressed a preference for a recorded decision, (iv) where there is ambiguity as to the scope of the respondent's consent, or (v) where the panel wishes to be certain that the complainant has shown that it possesses relevant trade mark rights.

In these proceedings, it is evident from the Respondent's emails, summarized above, that he has given informal consent to the transfer to the Complainant of the disputed domain name. The Complainant has not expressed a preference for a recorded decision but neither has it made a request for a suspension of the proceedings. In the specific circumstances of these proceedings, namely where the Complainant has made out a *prima facie* case that there has been dishonesty on the part of the Respondent, the Panel considers the appropriate course is to provide a decision as to the merits; see, for example, *Groupe Lactalis v. Rodger Young*, WIPO Case No. [D2022-3582](#) and *Man Group plc v. On behalf of mangroupfx.com, c/o IDPS International Domain Privacy Services GmbH / Rouslan Iskhakov, Green V*, WIPO Case No. [D2021-1646](#).

A. Identical or Confusingly Similar

When considering whether the disputed domain name is identical or confusingly similar to the Complainant's service mark, the generic Top-Level Domain ".live" may be disregarded as it is a technical requirement of registration. The remainder of the disputed domain name contains the entirety of the Complainant's GIVEWELL mark, without any addition or alteration. The Panel accordingly finds that the disputed domain name is identical to a service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, in summary, that a respondent may demonstrate that it may have rights or legitimate interests in a disputed domain name by demonstrating either that, before any notice to it of the dispute, it has been using or has made demonstrable preparations to use, the domain name in connection with a *bona fide* offering of goods or services or that it has been commonly known by the domain name or that it has been making a legitimate noncommercial or fair use of the domain name.

Notwithstanding the Respondent's emails to the Center, the Respondent's suggestion that the website to which the disputed domain name resolved was created by or for a third party is too slender in detail for the Panel to be able to accept that this was the case. Similarly, the Respondent's assertion that his website was simply for test purposes is equally improbable and is not accepted; a website of its relative sophistication is not created by happenstance. However, even if created for test purposes, in the present circumstances the impersonating and inherently misleading nature of the disputed domain name and website would constitute neither a *bona fide* offering of goods and services, nor a legitimate noncommercial or fair use. Having regard to its content, the only realistic inference to draw is that it was intended to be used for dishonest purposes namely, in order to mislead Internet users into thinking his website was that of the Complainant. Use of the disputed domain name in order to masquerade as the Complainant, likely in furtherance of a fraudulent phishing scheme seeking undue payments, does not amount to use in connection with a *bona fide* offering of goods and services; see *Zions Bancorporation, N.A. v. George Gillespie*, WIPO Case No. [D2022-3197](#). See also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".

The second and third circumstances set out at paragraph 4(c) of the Policy are inapplicable; there is no evidence that the Respondent is commonly known by the disputed domain name and the use to which it has been put has been commercial in character.

Lastly, the current inactive status of the disputed domain name comprises neither a *bona fide* offering of goods and services, nor a legitimate noncommercial or fair use of it.

The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain names.

C. Registered and Used in Bad Faith

Having regard to the use to which the Respondent has put the disputed domain name following registration, as well as the identical nature of the disputed domain name, it is reasonable to infer that he was aware of the Complainant as at the date of registration and that the disputed domain name was registered in order to take advantage of the Complainant's service mark in some manner. It is well established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration and in circumstances where the domain name is put to a misleading use, amounts to bad faith. As explained at section 3.1.4 of the [WIPO Overview 3.0](#): "[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith." The establishment of a website which purports dishonestly to assist Internet users with charitable donations by pretending to be that of the Complainant comprises paradigm bad faith use under the Policy; see, for example; *Virgin Enterprises Limited v. Obi Frank*, WIPO Case No. [D2022-2647](#). Moreover, section 3.1.4 of the [WIPO Overview 3.0](#) explains that "use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith".

The current inactive status of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding; see section 3.3 of the [WIPO Overview 3.0](#).

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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 <givewell.live> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: January 30, 2023