

ADMINISTRATIVE PANEL DECISION

Disabled American Veterans v. Carl Robinson
Case No. D2023-0065

1. The Parties

Complainant is Disabled American Veterans, United States of America (“United States”), represented by Williams Mullen, P.C., United States.

Respondent is Carl Robinson, TMN, United States.

2. The Domain Name and Registrar

The disputed domain name <disabled-american-veterans.org> is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 6, 2023. On January 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 9, 2023, 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 January 9, 2023 providing the registrant and contact information disclosed by the Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on January 13, 2023.

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 January 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 5, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 7, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on February 15, 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

Complainant is a large nonprofit veterans' services organization which provides support to veterans and their families through a network of local offices across the United States.

Complainant owns several registrations for its DISABLED AMERICAN VETERANS marks, including, for example, United States Trademark Registration No. 2658083 (service mark), registered January 25, 2005 in International Class 35, with a first use in commerce date of 1921.

The disputed domain name was registered December 5, 2022 and does not currently route to an active webpage.

5. Parties' Contentions

A. Complainant

Complainant avers that it has used its DISABLED AMERICAN VETERANS trademark since 1921 and that it provides services to over a million veterans annually.

Shortly after registration of the disputed domain name, Complainant avers, the disputed domain name routed to a website that extensively reproduced Complainant's official website without authorization. A few days later, it is alleged, the disputed domain name instead routed to a parking page with sponsored advertising links to third-party websites.¹

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's DISABLED AMERICAN VETERANS trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

On the foregoing basis, Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;

¹ Complainant submitted annexes to the Complaint showing the content of the webpages, including historical records from "www.archive.org".

- (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.

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#); WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain name is confusingly similar to Complainant's DISABLED AMERICAN VETERANS mark.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or similar to a complainant's marks. [WIPO Overview 3.0](#), section 1.11.1.

Omitting the ".org" TLD, the Panel notes that Complainant's entire DISABLED AMERICAN VETERANS mark is included in the disputed domain name, adding only hyphens between the words comprising Complainant's mark. The Panel finds that this minor modification to Complainant's mark does not prevent a finding of confusing similarity. See *id.*, section 1.7 (where a domain name incorporates the entirety of a trademark, the domain name will normally be considered by UDRP panels to be confusingly similar).

The Panel therefore finds that the disputed domain name is confusingly similar to Complainant's mark and concludes that the first element of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of rebuttal passes to the respondent. See, e.g., [WIPO Overview 3.0](#), section 2.1. The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*

Complainant alleges that Respondent is not commonly known by the disputed domain name and that Respondent has no rights or authorization to use Complainant's DISABLED AMERICAN VETERAN marks. In the absence of a Response, the Panel accepts these allegations as true.

Complainant has submitted credible evidence that Respondent copied Complainant's website, and later used the disputed domain name to route to a parking webpage displaying links to third-party websites.² The Panel does not consider Respondent's unauthorized copying from Complainant's website to be fair or legitimate noncommercial use. See, e.g., [WIPO Overview 3.0](#), section 2.13. The Panel also finds that the

² The Panel finds that Complainant's screen captures of relevant webpage images and web archives are reliable evidence of the appearance of the website to which the disputed domain name routed prior to the filing of this proceeding.

linking to webpages of third parties constitutes commercial use, which eliminates the possibility of legitimate noncommercial or fair use without intent for commercial gain. See, e.g., *The Bear Stearns Companies Inc. v. Darryl Pope*, WIPO Case No. [D2007-0593](#) (“[t]he Panel is free to infer that Respondent is likely receiving some pecuniary benefit [...] in consideration of directing traffic to that site” (citing *COMSAT Corporation v. Ronald Isaacs*, WIPO Case No. [D2004-1082](#))). *Fat Face Holdings Ltd v. Belize Domain WHOIS Service Lt*, WIPO Case No. [D2007-0626](#); *Sanofi-aventis v. Montanya Ltd*, WIPO Case No. [D2006-1079](#).

Since Respondent’s website does not route users to the services associated with the DISABLED AMERICAN VETERAN marks, the Panel further concludes that there is no *bona fide* use.

The Panel finds that Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests. Refraining from submitting a response, Respondent fails to contradict or rebut the *prima facie* case.

The Panel rules therefore that Complainant has established the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established, as elaborated below.

Using a domain name to intentionally attract Internet users, for commercial gain, by creating a likelihood of confusion, may be evidence of bad faith registration and bad faith use. Policy, paragraph 4(b)(iv). See, e.g., *L’Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc*, WIPO Case No. [D2005-0623](#).

The record shows that the disputed domain name was used to reproduce substantial aspects of Complainant’s website without authorization. The Panel infers that Respondent was undoubtedly aware of Complainant’s DISABLED AMERICAN VETERANS marks, which had been registered and enjoyed widespread use for over a hundred years. The Panel finds that Respondent deliberately included the DISABLED AMERICAN VETERANS mark in the disputed domain name to create confusion and attract Internet users to Respondent’s website for commercial gain. Therefore, the Panel concludes that Respondent registered the disputed domain name in bad faith.

The record also shows that the disputed domain name was used to display a parking page with links to third parties. The Panel concludes that this activity, along with the unauthorized copying of Complainant’s website, evidences bad faith use by Respondent. See [WIPO Overview 3.0](#), section 3.4.

The Panel further finds that Respondent’s failure to reply to the Complaint supports the Panel’s conclusion of bad faith.

Consequently, the Panel concludes that the requirements of the third element of Policy, paragraph 4(a) are fulfilled.

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 <disabled-american-veterans.org> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: March 1, 2023