

ADMINISTRATIVE PANEL DECISION

The American Society For the Prevention Of Cruelty to Animals v. Milen Radumilo

Case No. D2023-5345

1. The Parties

The Complainant is The American Society For the Prevention Of Cruelty to Animals, United States of America (“United States”), represented by Greenberg Traurig, LLP, United States.

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <aspcapro> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 22, 2023. On December 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 26, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 27, 2023, 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 29, 2023.

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 January 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 23, 2024.

The Center appointed Mireille Buydens as the sole panelist in this matter on January 24, 2024. 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 dedicated to preventing animal cruelty. Founded in 1866 in New York City, United States, the Complainant was the first humane society to be established in North America and is, today, one of the largest in the world. For decades, it has used and continues to use its name “The American Society for the Prevention of Cruelty to Animals” (abbreviated “ASPCA” – hereafter “the Trademark”) in connection with the operation of animal shelters, veterinary services, and educational services, among numerous other goods and services.

The Complainant invokes common law rights in the Trademark resulting from its use for 157 years, since as early as 1866 in the United States for its activities, as well as registered trademarks, including:

- United States Registration No. 1934584 for ASPCA registered on November 14, 1995. for international classes 16, 18, 21, 25, 36, 41 and 42.

The Complainant owns and operates the domain name <aspc.org> where the Complainant’s primary website is hosted. The Complainant also owns and operates the domain name <aspcapro.org> on which it has posted a website that provides training, research, and resources to help animal welfare professionals.

The disputed domain name was registered on March 13, 2023, using a privacy shield service. The registrant is a natural person, domiciled in Romania.

According to the Complaint, the disputed domain name is used to divert Internet traffic to websites, which display fraudulent notifications purportedly from Microsoft stating that malware has been detected on the visitor’s computer in an attempt to trick the visitor into clicking a button which will actually install malware on the visitor’s computer. The Respondent has also listed the disputed domain name for sale for USD 688 on a domain name sales and auction platform.

At the time of the decision, the Panel found that the disputed domain name resolves to a Pay-Per-Click (“PPC”) page redirecting the internet users to pages selling products for animals (dog food) as well as other products, and to a page offering to purportedly support the World Wide Fund for Nature (“WWF”). The disputed domain name is still offered for sale on the same auction platform for an amount of USD 799.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

First, the Complainant asserts that it owns registrations for the Trademark. The disputed domain name is confusingly similar to the Complainant’s Trademark. The disputed domain name incorporates the Complainant’s Trademark in full, with the mere addition of the generic Top-Level Domain (“gTLD”) “.pro”. The mere addition of a gTLD to the Complainant’s Trademark fails to avoid confusing similarity.

Second, the Complainant asserts that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not been licensed, contracted, or otherwise permitted by the Complainant to use the Trademark or to apply for any domain name incorporating the Trademark.

The Respondent is not commonly known by the disputed domain name and there are no prior trademark applications or registrations in the name of the Respondent for any mark incorporating the Complainant's Trademark anywhere in the world. The Respondent has not used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, the Respondent is using the disputed domain name to divert Internet traffic to websites, which display fraudulent notifications purportedly from Microsoft stating that malware has been detected on the visitor's computer in an attempt to trick the visitor into clicking a button which will actually install malware on the visitor's computer. The Respondent has also listed the disputed domain name for sale on an auction platform for a price in excess of its out-of-pocket costs, while the Respondent was well aware it contains the Complainant's well-known trademark.

Third, the Complainant asserts that the disputed domain name was registered and is being used in bad faith. The Complainant submits that the Trademark (which predates the registration of the disputed domain name) is a well-known Trademark. At the time of registration of the disputed domain name, the Respondent knew, or at least should have known, of the existence of the Complainant's Trademark. By registering and using the disputed domain name, the Respondent has created a likelihood of confusion regarding source, sponsorship, affiliation, or endorsement. Moreover, the disputed domain name is used to divert Internet traffic to deceptive offers to scan for malware that actually install malware on users' computers for the Respondent's commercial gain. This conduct demonstrates bad faith registration and use.

The Complainant also refers to the Respondent's pattern of prior bad faith registration of domain names utilizing well-known trademarks in which the respondent has no rights or legitimate interests.

The Complainant contends that the Respondent has also listed the disputed domain name for sale on a domain name and auction platform, for a price clearly in excess of the Respondent's investment in the disputed domain name.

The Complainant also relies on the fact that the disputed domain name has an active MX (mail exchange) record, which indicates use of the disputed domain name for email. This, in turn, would be an additional bad faith use of the disputed domain name, e.g., through phishing or fraudulent email communications.

Finally, the Complainant asserts that the use of a proxy registration service by the Respondent 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.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Policy Requirements

Dealing with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

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 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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Trademark is reproduced within the disputed domain name, with no change or addition. Accordingly, the disputed domain name is identical to the Trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.7.

The gTLD ".pro" is a standard registration requirement and does not prevent the disputed domain name from being identical to the Trademark. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent is not licensed by or affiliated with the Complainant in any way. There is no evidence that the Respondent would be commonly known under the disputed domain name.

There is no evidence of use or demonstrable plans to use the disputed domain name for a *bona fide* offering of goods or services, or of legitimate noncommercial or fair use of the disputed domain name, either. On the contrary, the Complainant has filed evidence showing that the disputed domain name was used to divert Internet traffic to deceptive offers to install malware on users' computers. Panels have held that the use of a domain name for illegal activity (here, distributing malware) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel further notes that disputed domain name is also currently used for directing internet traffic on a PPC website offering *inter alia* products and services directly competing with the Complainant's activities. By doing so, the Respondent uses the disputed domain name for the purpose of trading off the Complainant's well-known Trademark for commercial gain. This suggests that the Respondent has no *bona fide* intention behind the use of the disputed domain name. [WIPO Overview 3.0](#), section 2.9.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the disputed domain name is identical to the Complainant's Trademark which long predates the registration of the disputed domain name. The fact that the disputed domain name is identical to the Trademark, which is well-known and used by the Complainant for decades, could hardly be the result of mere coincidence. It is highly unlikely that the Respondent was not aware of the Complainant's Trademark at the time of the registration of the disputed domain name ([WIPO Overview 3.0](#) section 3.1.4).

The disputed domain name is also well-suited to mislead the public. The disputed domain name, which is identical to the Trademark and very similar to the domain names used by the Complainant, suggests an affiliation with the Complainant. The Respondent has sought to create a misleading impression of association with the Complainant, which is a well-known United States non-profit organization dedicated to preventing animal cruelty and thereby inspires confidence on the part of Internet users. Such a use, obviously intended to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's Trademark, falls within the scope of paragraph 4(b)(iv) of the Policy and qualifies as bad faith use.

The Panel also notes that the Complainant has filed evidence that the disputed domain name resolved to a website offering to install malware and currently resolves to a PPC website offering products and services competing with the services offered by the Complainant. Further, the Panel notes that the disputed domain name is offered for sale on an auction platform for a price of USD 799, a price likely exceeding the Respondent's investment in the disputed domain name. These circumstances evidence that the Respondent has used and is using the disputed domain name in bad faith.

Further, the Panel finds that the disputed domain name appears to be the latest in a long line of bad faith registrations (196) on part of the Respondent, construing a pattern of bad faith registration. See *American Airlines, Inc. v. Milen Radumilo*, WIPO Case No. [D2023-2926](#); *American Airlines, Inc. v. Contact Privacy, Inc., Customer 0161294199 / Milen Radumilo, Milen Radumilo*, WIPO Case No. [D2022-2326](#); *American Airlines, Inc. v. Super Privacy Service LTD c/o Dynadot / Milen Radumilo*, WIPO Case No. [D2021-1242](#); *American Airlines, Inc. v. Super Privacy Service Ltd, c/o Dynadot LLC / Domain Admin, Netlas, Cyan Yo, James Dupont, Zhichao, and Milen Radumilo*, WIPO Case No. [D2021-0442](#)., among others. Although each case must be judged on its own merits, this circumstance can be taken into account in determining whether the Respondent registered or used the disputed domain name in bad faith.

Further, the Complainant has filed evidence showing that the Respondent had set up MX servers in relation with the disputed domain name, thus revealing a possible intention to use the same as an email address. The Panel is not unaware of the common practice whereby hackers register domain names consisting of well-known brand names or company names, in order to use email addresses imitating the same, with the aim of engaging in acts of deception and extortion of Internet users. The creation of an email address - based on the disputed domain name - that could lead the recipient of a message sent from this address to believe that it is from the Complainant constitutes bad faith use of the disputed domain name (See *Credit Industriel et Commercial S.A. v. Zabor Mok*, WIPO Case No. [D2015-1432](#)).

Based on the available record, the Panel finds that the 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 <aspcapro> be transferred to the Complainant.

/Mireille Buydens/

Mireille Buydens

Sole Panelist

Date: January 31, 2024