

ADMINISTRATIVE PANEL DECISION

GoFundMe v. Eriko Toda

Case No. D2023-3356

1. The Parties

The Complainant is GoFundMe, United States of America (“United States”), represented by ZeroFox, United States.

The Respondent is Eriko Toda, Japan.

2. The Domain Name and Registrar

The disputed domain name <gofund-me.net> is registered with HOSTINGER operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 4, 2023. On August 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 7, 2023, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Domain Admin) and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 8, 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 amendment to the Complaint on August 15, 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 the Respondent of the Complaint, and the proceedings commenced on August 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 11, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on September 25, 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 describes itself as an American for-profit crowdfunding platform which allows people to raise money for events such as celebrations and graduations or other circumstances such as care for accidents and illnesses.

According to the Complaint, between 2010 and 2020, USD 9 billion was raised with contributions from over 120 million donors through the Complainant's service under the trademark "GOFUNDME".

The Complaint is not specific about where the services are provided or the contributors from. The Panel's review of the Complainant's website at "www.gofundme.com" indicates that the Complainant's services are currently available in 19 countries – apart from the United States, Canada and Australia, these are all in Europe.

The Complaint alleges that the Complainant has numerous trademark registrations worldwide and specifically identifies United States Registered Trademark No. 6,069,475. A search of the online Register maintained by the United States Patents and Trademarks Office discloses:

- (1) the trademark is GOFUNDME;
- (2) it is registered in the Principal Register in respect of a range of services in International Classes 35, 36, 38 and 42;
- (3) was registered on June 2, 2020; and
- (4) is derived from International Registration No. 1548365.

The International Registration does in fact designate numerous countries including, amongst others, Japan.

The search results for United States Registered Trademark No. 6,069,475 also indicate an earlier registration in the United States for GOFUNDME, No. 4,201,895, which is registered from September 4, 2012 in respect of charitable fundraising services in International Class 36.

According to the Whois report, the disputed domain name was registered on June 6, 2023.

It resolves to a website which features a "logo" comprised of "Sellbit" and device. The website appears to offer for sale for USD 30 what is presumably some software called "Blocker Anti Bot" or "Blocker V2". There is a copyright notice at the foot of the page "© 2023 Sellbit Tools".

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademarks for GOFUNDME identified in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top - Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".net" gTLD, therefore, the disputed domain name consists of the Complainant's registered trademark with a hyphen inserted before "me". Such grammatical elements are not usually treated as significant. See e.g. *Telstra Corporation Limited v Ozurls*, WIPO Case No. [D2001-0046](#). In any event, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is at least confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name well after the Complainant began using its trademark and also well after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived.

As the disputed domain name appears to be used in connection with a commercial offering of something which appears to be some sort of software product, the requirements of paragraph 4(c)(iii) are not applicable.

The Complainant points out that, while the website to which the disputed domain name resolves appears to be a functioning store page, all the related corporate information leads to a broken Instagram link. The Complainant has also ascertained that an MX record has been activated for the disputed domain name. The Complainant contends that emails using the disputed domain name have a high risk of impersonating the Complainant.

As the Complainant points out, there is no reference to "Go Fund Me" on the website at all. Nor is there any obvious connection between that expression and the website or the product apparently being offered for sale there.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name but, as discussed in section 5C below, has adopted a confusingly similar domain name to take advantage of its resemblance to the Complainant's trademark. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Panel notes that the Respondent is in Japan while it appears that much, if not all, of the Complainant's activity is outside Japan. On the other hand, the Complainant's operations under the GOFUNDME trademark are very substantial indeed. Moreover, the Respondent is offering its product, if there is a product, for sale in United States currency and the website is in English. These considerations indicate that the Respondent is targeting an international market. Furthermore, as already noted, there is no obvious connection between the phrase GOFUNDME and the Respondent or its product.

The Panel therefore accepts the Complainant's contention that there is a high likelihood that the Respondent knew of the Complainant's trademark when registering the disputed domain name and did so to take advantage of the reputation of the Complainant's trademark. As the Complainant contends, this brings the case within the terms of paragraph 4(b)(iv) of the Policy:

"by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] website or location or of a product or service on [the Respondent's] web site or location."

In these circumstances, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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, <gofund-me.net>, be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: October 5, 2023