

ADMINISTRATIVE PANEL DECISION

Marathon Digital Holdings, Inc. v. Thomas Neill
Case No. D2023-4333

1. The Parties

The Complainant is Marathon Digital Holdings, Inc., United States of America ("United States"), represented by Warshaw Burstein LLP, United States.

The Respondent is Thomas Neill, United States.

2. The Domain Name and Registrar

The disputed domain name <marake.com> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 18, 2023. On October 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 19, 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 (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 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 October 23, 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 October 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 15, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on November 23, 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.

On December 7, 2023, the Panel issued an Administrative Panel Procedural Order pursuant to paragraphs 10 and 12 of the Rules. In that order, the Panel observed that although the Whois information for the disputed domain name states that the disputed domain name was created on April 19, 2020, the Complainant asserts in the Complaint that the disputed domain name was registered on October 6, 2023. The Panel observed that the Whois information does state that the record for the disputed domain name was updated on October 6, 2023, and that such update could - but does not necessarily - reflect the date of acquisition of the disputed domain name by the Respondent.

The Panel further observed that Section 3.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") provides that the date on which a current registrant acquires a domain name is the date a panel will consider in assessing bad faith. Accordingly, the Complainant was requested to provide specific evidence and arguments supporting its assertion that the Respondent acquired the disputed domain name on October 6, 2023, or to provide evidence and arguments supporting that the Complainant has been using a relevant mark before the creation date of the disputed domain name of April 19, 2020.

The Panel requested the Complainant to provide, on or before December 12, 2023, such additional evidence and argument. The Respondent was afforded until December 19, 2023, to respond to the Complainant's submission. The Complainant filed an answer to Administrative Panel Procedural Order on December 12, 2023, providing argument and evidence supporting the Respondent's acquisition on October 6, 2023 (discussed below). The Respondent did not respond to the Administrative Panel Procedural Order.

4. Factual Background

The Complainant identifies itself as being "focused on securing and supporting the development of the Bitcoin ecosystem by building one of the largest, most agile, and most sustainable bitcoin mining operations in the world." It owns various trademarks that it uses in connection with its services, including the mark MARATHON, which is the subject of United States Reg. No. 6,861,995, registered on October 4, 2022, and the mark MARA, which is the subject of Canadian Reg. No. 2307,243, registered on September 14, 2022. The Complainant also filed an application for the mark MARA, which although not registered is the subject of an application dated March 22, 2022, to register it in the United States Patent and Trademark Office (Serial No. 97323880).

According to the Whois records, the disputed domain name was first registered on April 19, 2020. The Complainant asserted that the Respondent acquired the disputed domain name on October 6, 2023. The Complainant provided argument and evidence showing that before October 6, 2023, the disputed domain name was offered for sale by Mega Domains and listed on Dan.com. Screenshots demonstrate a change on October 6, 2023: the disputed domain name was no longer for sale and had a new owner who had not yet added it to their portfolio. The submitted evidence indicates a transfer of ownership presumably to the Respondent, on October 6, 2023. The Respondent has not disputed this evidence.

The Complainant evidenced that the Respondent has used the disputed domain name to offer the same or similar cryptocurrency mining services offered by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 has been registered and is being used in bad faith. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the MARATHON mark by providing evidence of its trademark registration. Additionally, the Complainant has asserted that it has used the mark MARA since at least as early as January 2021, and provided evidence in the form of web page screenshots to support such contention. The Respondent has not provided any evidence to dispute these assertions.

The disputed domain name incorporates the MARA mark in its entirety with an added "ke", which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's MARA mark. See [WIPO Overview 3.0](#), section 1.8. The MARA mark is recognizable for a showing of confusing similarity under the Policy. Additionally, the disputed domain name is phonetically similar to the MARATHON mark, encompassing two out of the three syllables in their entirety, sufficient for the Panel to find the disputed domain name is confusingly similar to that mark as well.

The Panel finds the Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) the Respondent has no registered trademarks or trade names corresponding to the disputed domain name, (2) the Complainant has not granted any authorization to the Respondent to register a domain name containing its trademarks or otherwise make use of its marks, and (3) no commercial relationship exists between the Complainant and the Respondent, nor does the website hosted at the domain name disclose such a lack of relationship.

The Panel notes that Complainant's name (Marathon Digital Holdings), is displayed on the website connected with the disputed domain name. Panels have held that the use of a domain name for illegal activity (e.g. impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor. The Panel finds the Complainant has established this second element under the Policy.

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 Panel notes that the Respondent has used the disputed domain name in connection with a website that offers services similar to those associated with the MARATHON and MARA trademarks. The Panel finds that this constitutes bad faith under paragraph 4(b)(iv) of the Policy because it shows that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's marks.

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 <marake.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: December 27, 2023