

ADMINISTRATIVE PANEL DECISION

Phoenix Life Limited v. Selma Adams

Case No. D2024-0713

1. The Parties

The Complainant is Phoenix Life Limited, United Kingdom, represented by Pinsent Masons LLP, United Kingdom.

The Respondent is Selma Adams, United States of America.

2. The Domain Name and Registrar

The disputed domain name <phoenixassetsmanagement.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 16, 2024. On February 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2024, 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 (Persons(s) Unknown, Name Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 20, 2024, 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 February 21, 2024.

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 February 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 15, 2024.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on March 25, 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 subsidiary of Phoenix Group Holdings Plc, a large and well-established provider of long-term savings and retirement services in the United Kingdom, which is in particular responsible for managing and investing funds on behalf of its customers.

Among other registrations, the Complainant owns the following trademark registrations:

- United Kingdom trademark registration No. UK00001306768 for PHOENIX, registered on October 5, 1990, in class 36;
- United Kingdom registration No. UK00003199678 for PHOENIX WEALTH ASSURED, registered on March 3, 2017, in classes 35 and 36.

The Complainant has also registered the domain name <phoenixwealth.co.uk> in January 2015.

The disputed domain name was registered on June 13, 2023. At the time of filing of the Complaint, it did not resolve to an active website, but to a page with the message “This page isn’t working at the moment”.

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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its registered trademark as it captures the entirety of its trademark PHOENIX with the mere adjunction of the terms “assets management” which describe the Complainant’s field of activity.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (i) the Respondent does not use the disputed domain name for any legitimate purposes or in connection with a bona fide offering of goods and/or services; (ii) the Respondent has no connection with the Complainant and there is no evidence of the Respondent holding any rights in a name or sign which is similar to or identical with the Complainant’s trademarks, being commonly known by the disputed domain name or having acquired any legitimate rights in respect of the disputed domain name since its registration or prior to it; (iii) the Respondent has no authorisation to use the Complainant’s trademark.

Finally, according to the Complainant, the Respondent was undoubtedly aware of its PHOENIX trademark. The Complainant contends that the disputed domain name was registered and is being used to create a false impression of association with the Complainant. The association of trademark PHOENIX and the word “assets management” is furthermore likely to lead the average Internet user to believe that the disputed domain name is owned by the Complainant. Moreover, the Respondent uses a privacy shield and conceals its real identity, which arguably further supports the assertion that the Respondent is intentionally abusing the disputed domain name. In light of the above, the Complainant submits that the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent 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 domain name; and
- (iii) the domain name registered by the respondent 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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "assets management"), may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 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 Panel finds that, in light of i) the distinctiveness and reputation of the trademark PHOENIX in the field of financial services and ii) the association of the mark PHOENIX with descriptive words referring directly to the Complainant's field of activity, the Respondent was most probably aware of the Complainant's trademark at the time of registration of the disputed domain name. The Panel therefore holds that the disputed domain name was registered in bad faith.

As to the requirement of use in bad faith, the Panel notes that the Respondent has not made an active use of the disputed domain name.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Indeed, the Respondent failed to submit a response or provide any evidence of actual or contemplated good-faith use. If the disputed domain name was connected to an active website, consumers would be likely to mistakenly assume that such website is operated or endorsed by the Complainant, when such is not the case. The Respondent was notified of the UDRP proceedings (as the delivery of the Written Notice by DHL was successful) but it chose to refrain from filing a Response. This corroborates the implausibility of a good faith holding of the disputed domain name by the Respondent.

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 <phoenixassetsmanagement.com> be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: April 9, 2024