

ADMINISTRATIVE PANEL DECISION

uBreakiFix, Co. v. Anonymize, Inc
Case No. D2024-0786

1. The Parties

Complainant is uBreakiFix, Co., United States of America ("United States"), represented by Adams and Reese LLP, United States.

Respondent is Anonymize, Inc, United States..

2. The Domain Name and Registrar

The disputed domain name <ubreakifixllc.com> (hereinafter "Disputed Domain Name") is registered with Epik, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 21, 2024. On February 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 23, 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 (Privacy Administrator) and contact information in the Complaint. The Center sent an email communication to Complainant on February 23, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 28, 2024.

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 Respondent of the Complaint, and the proceedings commenced on February 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 19, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent 's default on March 21, 2024.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on April 3, 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

Since 2009, Complainant has used the trademark UBREAKIFIX (hereinafter the “Mark”) in connection with repair services for computers, laptops, tablets, and phones. Complainant advertises and sells its products and services through its <uBreakiFix.com> website, as well as through other advertising and promotional campaigns. Complainant has served over six million customers at over five hundred retail stores throughout the United States, Canada, and the Caribbean.

In September 2022 Complainant has received over one million visits to its website at “uBreakiFix.com”. Complainant also maintains an active social media presence, with over eight thousand subscribers on YouTube, over thirty-five thousand Facebook “likes,” over three thousand X (formerly Twitter) followers, and over nineteen thousand Instagram followers.

Complainant owns registrations in many countries for the UBREAKIFIX trademark, including United States Trademark Registration No. 3855288 (registered on October 10, 2010) and Canadian Registration No. TMA901622 (registered on April 21, 2015).

The Disputed Domain Name was created on February 6, 2024. A screenshot that appeared on Respondent’s website shortly after the Disputed Domain Name was registered stated “Welcome to UBREAKIFIX, LLC”. As of the date of this Amended Complaint, the Disputed Domain Name is no longer directing to an active website. The Domain Name also has active Mail Exchange (“MX records”), indicating that Respondent has been configured the Disputed Domain Name to serve as an email address, but Complainant has not submitted any evidence that any email use.

Complainant’s counsel sent a cease-and-desist letter on February 6, 2024, demanding that Respondent transfer the Disputed Domain Name to Complainant, but received no response.

The publicly available Whois information identified “Privacy Administrator, Anonymize LLC” as the Registrant. In response to the Center’s request for verification, the Registrar replied that “the registrant of the domain is a client of Epik and is utilizing Anonymize as a private proxy. Anonymize is a Whois proxy service provider, which this domain is currently using. Thus, the current registrant is: Anonymize, Inc.” As a result, Complainant states that “Respondent’s identity is currently hidden by the registrar.”

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

B. Respondent

Respondent did not submit a response to the Complaint.

6. Discussion and Findings

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 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.

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 entirety of the Mark is reproduced and recognizable within the Disputed Domain Name. The addition of the "LLC" does not prevent the Domain Name from being confusingly similar to Complainant's Mark. See *CVS Pharmacy, Inc. v. Justin Chamber*, WIPO Case No. [D2023-3395](#) (finding the addition of "llc" in the domain <cvshealthllc.com> did not distinguish the domain from the complainant's CVS HEALTH mark, because the trademark was clearly recognizable in the 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.

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 Respondent may demonstrate rights or legitimate interests in the 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Disputed Domain Name.

Complainant declares that "U Break I Fix LLC" is not Respondent's name; that Respondent is not commonly known as "U Break I Fix LLC"; Respondent is not and has never been a licensee or franchisee of Complainant. Furthermore, Respondent has never been authorized by Complainant to register or use Complainant's Mark or to apply for or use any domain name incorporating the Mark.

Respondent has not rebutted 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 finds that Respondent registered the Disputed Domain Name in bad faith. Because the UBREAKIFIX Mark is a distinctive Mark, it is not plausible that Respondent selected it for any descriptive or other non-trademark meaning. See *uBreakiFix, Co. v. Milen Radumilo*, WIPO Case No. [D2022-4273](#) (“Given the distinctiveness of the Complainant’s UBREAKIFIX trademark, the Panel holds that Respondent should have been aware of the Complainant’s trademark at the time of registering the Disputed Domain Name”). Accordingly, the Panel finds, based on the balance of probabilities, that Respondent was aware of and targeted Complainant when it registered the Disputed Domain Name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The statement “Welcome to UBREAKIFIX, LLC” appeared on Respondent’s website immediately after the Disputed Domain Name was registered. This use reflects bad faith impersonation, but even 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. [WIPO Overview 3.0](#), section 3.3.

These factors all support a finding of bad faith on the available record.

The Panel has already found above that because the Mark is distinctive it is more probable that Respondent was targeting Complainant.

The Panel draws adverse an inference¹ from Respondent’s failure to respond to Complainant’s letter or the Complaint. Compounding the omission, Respondent also failed to disclose its identity in response the Center’s request for Registrar verification. Panelists have long recognized that there are legitimate reasons for a registrant to shield its identity from the public WhoIs record, but there is no right to conceal Respondent’s identity when the UDRP provider, in this case WIPO, submits a verification request to the Registrar. Paragraph 4(b) of the Rules requires that after receiving the Provider’s verification request, “the Registrar *shall* provide the information requested [...]” (emphasis added). Furthermore, as thoroughly reviewed in *Rubis Energie v. Privacy Administrator, Anonymize, Inc.*, WIPO Case No. [DCO2019-0033](#), in 2018 ICANN adopted a *Temporary Specification for gTLD Registration Data* to clarify Registrar obligations in the wake of the GDPR. Appendix E to the Temporary Specification provides:

Registrar Requirement: The Registrar MUST provide the UDRP provider with the full Registration Data for each of the specified domain names, upon the UDRP provider notifying the Registrar of the existence of a complaint, or participate in another mechanism to provide the full Registration Data to the Provider as specified by ICANN. “<https://www.icann.org/resources/pages/gtld-registration-data-specs-en/#appendixE>”. (visited April 17, 2024) (emphasis in original). The Specification defines “Registration Data” as “data collected from a natural and legal person in connection with a domain name registration.” *Id.*

Apparently ignoring this clear mandate, Anonymize, Inc. has persisted in its chronic disregard of its obligations. See, e.g., *Sütas Süt Ürünleri Anonim Şirketi v. Privacy Administrator, Anonymize, Inc./independent Digital Artists*, WIPO Case No. [D2022-0615](#) (“The Panel notes that this is not the first time

¹ Under paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the Panel shall “draw such inferences therefrom as it considers appropriate”. See also *Rubis Energie v. Privacy Administrator, Anonymize, Inc.*, WIPO Case No. [DCO2019-0033](#).

that there have been concerns arising from the actions of the Registrar [Anonymize, Inc.] in recent years [...] [collecting cases]]. See also *Created, Inc. v. Privacy Administrator, Anonymize, Inc./Robert Monster*, WIPO Case No. [D2021-1050](#)

Consequently, the Panel finds that Respondent's has relied on Anonymize, Inc., to conceal its identify and that doing so supports a finding of bad faith. "Where it appears that a respondent employs a privacy or proxy service merely to avoid being notified of a UDRP proceeding filed against it, panels tend to find that this supports an inference of bad faith; a respondent filing a response may refute such inference. Panels additionally view the provision of false contact information (or an additional privacy or proxy service) underlying a privacy or proxy service as an indication of bad faith." [WIPO Overview 3.0](#) section 3.6. See also *Dispatchhealth Management, LLC v. Anonymize, Inc.*, WIPO Case No. [D2023-4486](#) ("Here, it is evident that Respondent has either intentionally employed a proxy registration service [Anonymize, Inc.], or intentionally selected a registrar that offers default proxy registration services (and has repeatedly refused to disclose customer data to the Center in numerous cases) in order to conceal its identity [...].")

This subterfuge is more concerning because Respondent also failed to respond to the allegation that Respondent's configuration of MX records supports an inference that Respondent may be using the Domain Name for sending fraudulent emails. See *Skyscanner Limited v. Contact Privacy Inc. Customer 0162707386 / Milen Radumilo*, WIPO Case No. [D2021-3500](#) ("That the Respondent has set up MX records indicates a willingness to communicate with those same consumers, which will only exacerbate confusion."). Although there is no evidence in the record that Respondent has in fact used the Disputed Domain Name to send fraudulent email, Respondent has concealed its identity, thereby limiting investigation into whether Respondent has engaged in a pattern of abuse. An adverse inference is appropriate in these circumstances.

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

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 <ubreakifixllc.com> be transferred to Complainant.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date April 17, 2024