

## **ADMINISTRATIVE PANEL DECISION**

Change Healthcare Operations, LLC v. Privacy service provided by Withheld for Privacy ehf / Yogesh Kumar  
Case No. D2022-0063

### **1. The Parties**

The Complainant is Change Healthcare Operations, LLC, United States of America (“United States”), internally represented.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Yogesh Kumar, India.

### **2. The Domain Name and Registrar**

The disputed domain name <peryourhealth.net> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 7, 2022. On January 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 10, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 11, 2022, 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 January 20, 2022.

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 January 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 16, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on February 21, 2022. 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 Delaware, United States, limited liability company with its principal place of business in Nashville, Tennessee, United States. The Complainant states that it is a leading healthcare technology company that offers software and technology-enabled services to help create a stronger, more collaborative healthcare system. In particular, the Complainant provides payment services used by medical practitioners to obtain payments from their patients.

The Complainant is the owner, by assignment, of the mark PERYOURHEALTH, which was previously used by the Complainant's predecessor, Per-Se Technologies. Per-Se Technologies had been the owner of United States Registered Trademark No. 2742968 for the word mark PERYOURHEALTH.COM, registered on July 29, 2003 in Class 35. Said registered trademark was cancelled on March 7, 2014. Per-Se Technologies was acquired by McKesson Corporation in 2006 in a USD 1.8 billion transaction. McKesson Corporation founded a new healthcare company in March 2017 with Change Healthcare Holdings, Inc., combining the latter's business with McKesson Corporation's information technology unit. Said new healthcare company is the Complainant. McKesson Corporation assigned all rights to its PERYOURHEALTH mark to the Complainant in 2017 and transferred the domain name <peryourhealth.com>, originally registered on September 21, 1999, to the Complainant in 2019.

Although the Complainant no longer possesses registered trademark rights in PERYOURHEALTH, it asserts that it possesses unregistered trademark rights therein, that the mark is famous, and that it is of longstanding and continuous use dating back to 2002. The Complainant notes that PERYOURHEALTH branded medical payment portals have been provided to medical practices since 2002 and that, for example, patients logged into said portals over three million times between July 1, 2019 and June 30, 2020.

The disputed domain name was registered on October 9, 2021. A screenshot produced by the Complainant shows that the website at the disputed domain name was designed to mimic the Complainant's site, stating "PerYourHealth | Pay Medical Bill Online". A large button on said site entitled "Pay Your Bill" diverts users to <quickyandpaybill.org> which also imitates the Complainant's site. The Complainant asserts that the disputed domain name was used to obtain the data of its customers' patients, and that it linked to a "PayPal" payment page through which the Respondent fraudulently solicited payments from such patients.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends as follows:

Identical or confusingly similar

The Complainant has unregistered trademark rights in the PERYOURHEALTH trademark arising through longstanding use in connection with medical payment portals. The disputed domain name is confusingly similar to such mark, the addition of the ".net" generic Top-Level Domain being an insignificant difference.

Rights or legitimate interests

The PERYOURHEALTH trademark is uniquely associated with the Complainant and its provision of medical payment portals. The Respondent is not known, or identified by, or associated with the name PERYOURHEALTH, nor is it affiliated in any way with the Complainant's business. The Respondent has not acquired trademark rights in said mark. The Respondent has used the website associated with the disputed

domain name to attract Internet users seeking the Complainant's medical payment services at the Complainant's website at "www.peryourhealth.com" and has diverted them to its cloned site at the disputed domain name. There is no evidence of the Respondent's use of or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent makes no legitimate noncommercial or fair use of the disputed domain name and uses deceptive links on its website to solicit payments from medical patients of the Complainant's medical provider customers, and also to perpetrate a suspected phishing scam upon such patients.

#### Registered and used in bad faith

The Respondent conducts no legitimate commercial or noncommercial business under the PERYOURHEALTH trademark. The use of the website associated with the disputed domain name demonstrates the Respondent's prior knowledge of the Complainant's mark. The Respondent has intentionally attempted to deceive patients of the Complainant's medical practitioner customers. The disputed domain name is being used in connection with a fraudulent revenue-generating phishing scheme pursuant to which the Respondent fraudulently seeks personal and financial data via the disputed domain name. The diversionary use of the disputed domain name constitutes bad faith registration and use under the Policy. The Respondent intentionally capitalizes on the Complainant's mark to create confusion among those searching for the Complainant's payment services at <peryourhealth.com> which is referenced on medical bills from the Complainant's customers. There is no plausible circumstance under which the Respondent could legitimately register or use the disputed domain name and it is therefore 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.

#### **A. Identical or Confusingly Similar**

The first element inquiry under the Policy proceeds in two parts. First, the Complainant must demonstrate UDRP-relevant rights in a trademark, whether registered or unregistered. Secondly, any such trademark is compared with the disputed domain name, typically on a straightforward side-by-side basis to assess identity or confusing similarity. In such comparison, the generic Top-Level Domain ("gTLD"), in this case, ".net", is typically disregarded on the basis that this is required in a domain name for technical reasons only.

Although the Complainant's predecessors in interest originally owned a registered trademark for the word mark PERYOURHEALTH.COM, as described in the factual background section above, this has since been cancelled. The Complainant therefore claims rights in the unregistered trademark PERYOURHEALTH due to longstanding use dating back to 2002. In order for such a claim to be made out, the evidence before the Panel must show that this term has become a distinctive identifier associated with the Complainant's goods and services. As is noted in section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), relevant evidence of such may include a range of factors,

such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.

While the Panel would have wished to see more evidence of the use and extent of the Complainant's mark in practice over the years, there is nevertheless sufficient material on the present record for the Panel to find that the mark PERYOURHEALTH has acquired a secondary meaning and therefore that the Complainant has unregistered trademark rights therein for purposes of the Policy. In particular, the Complainant is able to show that its predecessor was using said mark as early as July 29, 2003 and continued to do so from that date up to at least March 7, 2014. The Complainant also shows that it is the owner of the corresponding domain name <peryourhealth.com>, registered on September 21, 1999 and continuously renewed to date. The Complainant shows the transfer of the intellectual property in the PERYOURHEALTH mark from its predecessors, and of the said domain name, following a substantial corporate deal which took place between 2016 and 2017, and likewise following a preceding deal in 2006. The Complainant makes the unchallenged assertion that several million logins took place into its PERYOURHEALTH branded portal over the period between July 1, 2019 and June 30, 2020, suggesting that a very substantial number of end-users are likely to be aware of the mark. Finally, the Respondent's use of the PERYOURHEALTH mark to brand a cloned version of the Complainant's website itself further affirms the Complainant's position regarding its claim to unregistered trademark rights in this term, as it indicates that the Respondent is targeting the said mark, making deliberate reference to the Complainant's business as conducted via the online portal at <peryourhealth.com>. As noted in section 1.3 of the [WIPO Overview 3.0](#), "The fact that a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier".

In all of the above circumstances, the Panel finds that the Complainant has UDRP relevant rights in the unregistered trademark PERYOURHEALTH. Comparing said mark to the Second-Level Domain of the disputed domain name, it may be seen that the former is reproduced in its entirety in the latter. Accordingly, the Panel finds that the disputed domain name is identical to the Complainant's said trademark and that the Complainant has therefore carried its burden with regard to paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

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

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. In the present case, the Panel finds that the Complainant has established the requisite *prima facie* case based on its submissions that the Respondent is not known by the

name “peryourhealth”, is not affiliated in any way with the Complainant’s business, has not acquired trademark rights in said mark, has not used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services, is not making a noncommercial or fair use of the disputed domain name, and has cloned the Complainant’s portal site found at “www.peryourhealth.com” for use with the disputed domain name in order to fraudulently obtain payments and personal data from the Complainant’s end-users.

The Complainant having made out the requisite *prima facie* case, the burden of production shifts to the Respondent to set out any evidence of rights or legitimate interests which it might have in the disputed domain name. The Respondent however has chosen not to engage with the administrative proceeding, and the use to which the disputed domain name has been put must speak for itself. Such use appears to the Panel to involve the deception of the Complainant’s end-users into believing that the website (and the related link and payment service) found at the disputed domain name is in fact the Complainant’s portal found at “www.peryourhealth.com” or legitimate links therefrom. Such use could not be considered a *bona fide* offering of goods and services and could not confer any rights or legitimate interests in the disputed domain name upon the Respondent.

In all of these circumstances, the Panel finds that the Respondent has failed to rebut the Complainant’s *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name, and accordingly that the Complainant has carried its burden in terms of paragraph 4(a)(ii) of the Policy

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

In the present case, the Panel is satisfied that the Complainant has made out a case of registration and use in bad faith in terms of paragraph 4(b)(iv) of the Policy. The use of the disputed domain name to clone the Complainant’s portal site affirms that the Respondent was aware of the Complainant and the Complainant’s PERYOURHEALTH trademark when it registered and used the disputed domain name, and that it intended to target the Complainant and the Complainant’s mark for its own commercial gain.

The website associated with the disputed domain name is designed to cause the Complainant’s end-users, being patients of the Complainant’s medical practitioner customers, to believe that they are dealing with the Complainant’s portal when they are not. Registration and use of a domain name to impersonate a complainant for fraudulent purposes is manifestly considered evidence of bad faith under the Policy (see, for example, *FIL Limited v. Stewart Lawton*, WIPO Case No. [D2021-2218](#) and

*Olympus Corporation v. WhoisGuard Protected, WhoisGuard, Inc. / Flash Webs*, WIPO Case No. [D2021-0382](#)).

Finally, the Panel notes that the Respondent appears to have registered the disputed domain name with intentionally incomplete registrant contact data. The Respondent's street address, city address and province are all merely stated as "Delhi" and the Respondent must have been aware that this is an incomplete address at which it could never have been reached. In this particular case, the Respondent's apparent provision of incomplete contact data suggests that the Respondent has sought to delay or avoid the consequences of enforcement action against it and is a further indicator of registration and use in bad faith (see, for example, similar circumstances in *Philip Morris Products S.A. v. Alireza Ejtehad*, WIPO Case No. [D2021-2317](#)).

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith and therefore that the Complainant has carried its burden in terms of paragraph 4(a)(iii) 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 <peryourhealth.net> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: March 7, 2022