

ADMINISTRATIVE PANEL DECISION

Ryzac, Inc. v. Privacy service provided by Withheld for Privacy ehf /
Polyakov Andrey
Case No. D2022-0658

1. The Parties

The Complainant is Ryzac, Inc., United States of America (“United States”), represented by Orrick, Herrington & Sutcliffe, LLP, United States.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Polyakov Andrey, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <codecademypro.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 February 24, 2022. On February 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 25, 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 February 27, 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 amended Complaint on February 28, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on March 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 5, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on August 4, 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. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

The Respondent's mailing address is stated to be in Ukraine (whether or not this is indeed a genuine contact address for the Respondent is not known to the Panel). Ukraine is subject to an international conflict at the date of this Decision that may impact case notification. Accordingly, it is appropriate for the Panel to consider, in its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having regard to all the circumstances of the case, the Panel is of the view that it should. The Panel has reached this conclusion in part because there is no reason to believe that the Respondent is unaware of the proceeding or that it does not have control over the disputed domain name. Further to the Rules, the Center transmitted written notice of the Complaint to both the named Privacy Service and the Respondent. The courier notifications indicate that each of these was delivered successfully. The Center also sent the Notification of Complaint by email to the Respondent at its email address, as registered with the Registrar, and to a postmaster email address as specified by the Rules. There is no evidence that the emailed Notification of Complaint was not successfully delivered to the first of these email addresses. In addition, the disputed domain name currently appears to resolve to an inactive webpage, whereas it was resolving to a webpage at the time of the filing of the Complaint and the Notification of Complaint, which is a further indication of the probability that the Respondent has control over the disputed domain name and has sought to address the charges filed against it by changing the web content.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, Namecheap, Inc., is in Arizona, United States of America.

It is moreover noted that, for reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and in order that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision.

5. Factual Background

Established in 2011, the Complainant supplies online educational services, notably via a platform named "CODECADEMY" which teaches users coding languages and web development. The said platform has around 50 million users and its online location is "www.codecademy.com". The corresponding domain name was registered on August 10, 2011. The Complainant has been using an affiliated mark, CODECADEMY PRO, since 2016, to identify its paid subscription offering. No information was provided regarding registered trademarks in respect of the CODECADEMY PRO mark, and the Panel presumes it to be unregistered.

The Complainant is the owner of the United States Registered Trademark No. 4385511 for the word mark CODECADEMY, registered on August 13, 2013, in International Class 41.

The disputed domain name was registered on December 10, 2021. Nothing is known of the Respondent other than that it appears to be an individual, and that it has provided the Registrar with a contact address in Ukraine. The website associated with the disputed domain name, at the time of the filing of the Complaint, offered training courses in coding under the name “codecademy” and reproduced the Complainant’s logo featuring the lowercase word “codecademy” with the word “code” in a box, and with a line under the letter “c” of “cademy”.

6. Parties’ Contentions

A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The Complainant has rights in the CODECADEMY trademark. The disputed domain name is essentially identical thereto and to the Complainant’s extensively-used domain name <codecademy.com>. The addition of the word “pro” and the generic Top-Level-Domain (“TLD”) does not mitigate the Respondent’s unlawful use and registration, and does not affect the disputed domain name for the purpose of determining whether it is identical or confusingly similar under the Policy. The Respondent also imitates the Complainant’s exact stylization and presentation of its CODECADEMY mark on its website in both the header and footer.

Rights or legitimate interests

The Complainant has not authorized the Respondent to use the CODECADEMY mark. The Respondent is not a licensee or an authorized provider of the Complainant’s platform or services. The Respondent is not believed to be commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. The disputed domain name is likely to be understood by consumers to refer to the Complainant’s own online educational platform. The disputed domain name is being used to offer nearly identical online educational courses for coding using copied content from the Complainant’s site. It is extremely likely to divert confused consumers from the Complainant’s own platform and services. Registering a domain name that incorporates another’s trademark and creating an associated website that imitates the trademark owner’s own products and services does not constitute a *bona fide* offering of goods or services. The Respondent is not using the disputed domain name in connection with any original or *bona fide* offering of goods or services or otherwise making a legitimate noncommercial or fair use of the disputed domain name.

Registered and used in bad faith

The Respondent is undoubtedly aware of the Complainant and is intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark. Said mark was first adopted by the Complainant over a decade ago, and the CODECADEMY PRO mark was first adopted in 2016, long before the Respondent registered the disputed domain name in 2021. The Respondent purports to provide the same services as the Complainant under an identical or confusingly similar mark and is trying to obtain commercial gain from consumers’ confusion and an association between the disputed domain name and the Complainant’s <codecademy.com> domain name. This shows the Respondent’s actual knowledge of the Complainant’s rights in the CODECADEMY mark.

The Respondent has directly copied a number of images, design elements and content from the Complainant’s website, including the very same distinctive stylization of the Complainant’s CODECADEMY mark. Such copying and unauthorized uses of another’s trademark and copyrightable materials have been acknowledged as evidence of bad faith in previous cases under the Policy.

B. Respondent

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

7. 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 usually proceeds in two parts. First, the Complainant must demonstrate UDRP-relevant rights in a trademark, whether registered or unregistered. Secondly, such trademark is compared with the disputed domain name, typically on a straightforward side-by-side basis, usually disregarding the TLD, to assess identity or confusing similarity. If, on the basis of such comparison, the disputed domain name is seen to be identical to the Complainant's trademark, identity will generally be found, while if the Complainant's mark is otherwise recognizable in the disputed domain name, confusing similarity will usually be found.

In the present case, the Panel is satisfied that the Complainant has demonstrated UDRP-relevant rights in its CODECADEMY registered trademark, as noted in the factual background section above. Turning to the comparison exercise, it may be seen that the Complainant's trademark is included in its entirety in the disputed domain name and is fully recognizable notwithstanding the presence of the additional word "pro". In these circumstances, it is unnecessary for the Panel to review the position regarding the Complainant's submissions relating to its CODECADEMY PRO (unregistered) trademark.

In light of the above analysis, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark and accordingly that the Complainant has 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 Complainant has not authorized the Respondent to use its CODECADEMY mark, that the Respondent is not an authorized provider of the Complainant’s platform or services, that the Respondent is not believed to be commonly known by the disputed domain name, that the disputed domain name is being used to offer nearly identical online educational courses for coding using copied content from the Complainant’s site, and that the disputed domain name is not being used in connection with a *bona fide* offering of goods or services.

In the above circumstances, the burden of production shifts to the Respondent to bring forward evidence of any rights or legitimate interests which it might have in the disputed domain name. The Respondent has remained silent and has not engaged with the present proceeding. There are no submissions or evidence available which might have supported any claim of rights or legitimate interests in respect of the disputed domain name. The Panel has been unable to determine any likely rights or legitimate interests which the Respondent might have claimed had it participated in this administrative proceeding. The use of the disputed domain name in connection with a commercial website offering similar services to those of the Complainant under the Complainant’s mark, using a version of the Complainant’s stylization of such mark together with images from the Complainant’s own website, could not be regarded as conferring any rights or legitimate interests upon the Respondent (nor would its current non-use). The Panel is satisfied that the disputed domain name is almost identical to the Complainant’s distinctive CODECADEMY trademark and, noting also that the Complainant uses the unregistered mark CODECADEMY PRO (to which the disputed domain name is identical) the Panel finds that the disputed domain name carries a high risk of implied affiliation.

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 circumstances of the present case, the Panel finds that there is evidence of the registration and use of the disputed domain name in bad faith based on the circumstances set out in paragraph 4(b)(iv) of the Policy. The disputed domain name has been used in connection with a website offering the same or similar services as the Complainant under the Complainant's mark, having copied the Complainant's stylization of such mark together with images taken from the Complainant's own website. It appears to the Panel that the Respondent intended to redirect the Complainant's customers to the Respondent's service offering for commercial gain. The use of the disputed domain name in this fashion affirms that the Respondent was aware of the Complainant and of the Complainant's trademark at the point of registration of the disputed domain name, and indeed that the Respondent intended to target the Complainant's rights unfairly and in bad faith. The current non-use does not change this analysis.

In all of the above circumstances, 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.

8. 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 <codecademypro.net> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: August 18, 2022