

ADMINISTRATIVE PANEL DECISION

Wikimedia Foundation, Inc. v. Registration Private, Domains By Proxy, LLC /
Webifiers Agency

Case No. D2022-1383

1. The Parties

Complainant is Wikimedia Foundation, Inc., United States of America (“USA”), represented by Jones Day, USA.

Respondent is Registration Private, Domains By Proxy, LLC, USA / Webifiers Agency, USA.

2. The Domain Name and Registrar

The disputed domain name <wikipediapublisher.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2022. On April 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 20, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on April 20, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on April 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 Respondent of the Complaint, and the proceedings commenced on April 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 12, 2022.

The Center appointed John C. McElwaine as the sole panelist in this matter on May 16, 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

Complainant, the Wikimedia Foundation, Inc. is a nonprofit corporation founded in 2003. Complainant is dedicated to encouraging the growth, development, and distribution of free multilingual, educational content. Complainant manages 13 free knowledge projects. One of the free knowledge projects is Wikipedia, a free, online encyclopedia compiled, edited, and maintained by 146,000 active contributors.

Relevant to this proceeding, Complainant obtained a registration for the trademark WIKIPEDIA from the United States Patent and Trademark Office on January 10, 2006 in Class 41 with the Registration no. 3,040,722. Moreover, Complainant owns 430 trademark registrations worldwide for the WIKIPEDIA trademark and its foreign equivalents. Collectively, these registered trademark rights are referred to herein as the "WIKIPEDIA Mark". Complainant registered the domain name <wikipedia.org> on January 13, 2001. The "www.wikipedia.org" website is one of the top visited websites in the world. Complainant also owns registrations for dozens of domain names that include the WIKIPEDIA trademarks.

The Domain Name was registered on April 8, 2021. At the time of the filing of the Complaint, the Domain Name resolved to a website where paid editing services offered for the Wikipedia entries. However, at the time of the Decision, the Domain Name resolved to an inactive website.

5. Parties' Contentions

A. Complainant

Complainant argues that the Domain Name should be transferred to Complainant due to the reasons described below. Complainant alleges as follows:

With respect to the first element of the Policy, Complainant alleges that the Domain Name is confusingly similar to Complainant's WIKIPEDIA Mark because the Domain Name incorporates the distinctive WIKIPEDIA Mark in its entirety. Moreover, Complainant contends that the addition of a common term such as "publisher" does not give the Domain Name a distinctive character and fails to dispel any confusion between Complainant's WIKIPEDIA Mark and the Domain Name. Rather, Complainant alleges that the addition of such a common term may serve to increase the risk of confusion because it may reinforce the impression that there is a connection between the Domain Name and Complainant and its services.

With respect to the second element of the Policy, Complainant alleges that Respondent has no rights or legitimate interests in the Domain Name. Respondent is not a licensee nor otherwise affiliated with Complainant. Complainant contends that due to the lack of authorization, licensing, or other permission in the Domain Name, Respondent has no legitimate interests or rights in the Domain Name. Moreover, Complainant contends that there is no indication to show that Respondent is commonly known by the Domain Name. Additionally, Complainant argues that Respondent's attempt to mask its identity through a privacy protection service indicates that the Panel should presume that Respondent is not commonly known by the Domain Name. Complainant also alleges that the use of the Domain Name to operate a website with paid Wikipedia editing services for which there is no disclosure of Respondent's relationship with Complainant is not a *bona fide* use. Rather, Respondent's website gives the impression that Respondent has an official connection with Complainant. Thus, Complainant argues that it has made a *prima facie* showing that Respondent does not have any rights or legitimate interests in the Domain Name.

With respect to the third element of the Policy, Complainant argues that the Domain Name is registered and used in bad faith. Complainant alleges that evidence from Respondent's website shows that Respondent is well acquainted with Complainant's WIKIPEDIA Mark. Complainant asserts that Respondent's own claims on the website shows an intentional attempt to attract Internet users to use its paid editing and page maintaining services. Complainant contends that Respondent's attempts to confuse Internet users of its affiliation with Complainant for commercial gain supports an inference that the Domain Name is in bad faith. Moreover, Complainant alleges that Respondent's failure to respond to the cease and desist letter sent by the Complainant to the Respondent on October 15, 2022, indicates bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4 of the Policy requires that a complainant demonstrate the following in order to succeed in a UDRP proceeding:

- (i) The Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) Respondent has registered and used the Domain Name in bad faith.

Due to the absence of a response from Respondent, the Panel may accept the factual allegations stated in the Complaint as true and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint").

Complainant bears the burden of establishing these three elements by a preponderance of the evidence. See *Bootie Brewing Company v. Deanna D. Ward and Grabebootie Inc.*, WIPO Case No. [D2003-0185](#). Taking into consideration the Complaint, the Policy, the Rules, the Supplemental Rules, and other applicable principals of law, the Panel's findings on each of the three elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that Complainant show beyond a preponderance of evidence that Respondent's Domain Name is identical or confusingly similar to Complainant's Mark.

Ownership of a trademark is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2. Complainant has established that it is the owner of numerous trademark registrations for the WIKIPEDIA Mark and its foreign equivalents.

The Domain Name, <wikipediapublisher.com>, includes Complainant's Mark in its entirety. The use of the entirety of Complainant's Mark alone is enough to show that the Domain Name is identical or confusingly similar to Complainant's Mark. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); *F. Hoffmann-La Roche AG v. MEDISOURCE LTD*, WIPO Case No. [D2009-0990](#). Moreover, the addition of a term such as "publisher" does not distinguish the Domain Name from Complainant's trademark nor dispel any confusing similarity. See *Jagex Limited v. can wang, Wu Chen*, WIPO Case No. [D2010-0680](#).

In sum, the Domain Name is confusingly similar to Complainant's Mark because it contains the entirety of the WIKIPEDIA Mark. For these reasons, pursuant to paragraph 4(a)(i), the Panel finds that Complainant has shown a preponderance of evidence that the Domain Name is confusingly similar to Complainant's Mark.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, Complainant has the burden of establishing that Respondent does not have a right or legitimate interest in the Domain Name. Complainant must make only a *prima facie* showing of this element. See *The Wikimedia Foundation, Inc. v. Abid Karmali*, WIPO Case No. [D2018-0708](#). The burden then shifts to Respondent to present evidence that it has rights or legitimate interests in the Domain Name. If Respondent fails to meet this burden, then Complainant is deemed to have shown that Respondent has no rights or legitimate interests in the Domain Name. See *Wikimedia Foundation, Inc. v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Olive Digital*, WIPO Case No. [D2021-3336](#).

The Panel finds that Complainant has made a *prima facie* showing that Respondent does not have any rights or legitimate interests in the Domain Name. As stated in paragraph 4(a)(ii) of the Policy, a respondent may demonstrate rights or legitimate interests in a Domain Name if the Domain Name is used in connection with a *bona fide* offering of goods, if Respondent has been commonly known by the Domain Name, or if Respondent is making a legitimate noncommercial or fair use of the Domain Name.

Complainant asserts that (i) Respondent is not commonly known by the name Wikipedia Publisher, (ii) that Respondent is not a licensee of the WIKIPEDIA Mark, nor has Complainant consented to Respondent's use of the WIKIPEDIA Mark, (iii) Respondent is not using (and has not made demonstrable preparations to use) the Domain Name in connection with a *bona fide* offering of goods or services, and (iv) Respondent is not making a legitimate noncommercial or fair use of the Domain Name.

Although properly notified by the Center, Respondent failed to submit any response on these points. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect to the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant's assertions, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the disputed domain name. See *AREVA v. St. James Robyn Limoges*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#). Accordingly, as discussed in detail below, the Panel finds that Complainant has met its burden and Respondent will not be able to show rights or legitimate interests under any of the three conditions under paragraph 4(c) of the Policy.

Respondent cannot satisfy paragraph 4(c)(ii) of the Policy. There is no evidence in the record that Respondent is commonly known by the name Wikipedia Publisher. In fact, to the contrary, the Whois information indicates that Respondent's name is "Webifiers Agency". See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#) ("the Panel notes that the respondent's name is 'Bestinfo' and that it can therefore not be 'commonly known by the Domain Name.'"). The fact that the website that resolves at the Domain Name purports to be operated by Wikipedia Publisher does not satisfy paragraph 4(c)(ii). Complainant alleges and the Panel accepts that offering paid editing services shows an intentional attempt to mislead Internet users to Respondent's website by confusing them as to the source, sponsorship or affiliation or endorsement of this website by Complainant. There is no support that using a name on a webpage, particularly in an alleged infringing manner, means that one is commonly known by the domain name. Such circular logic would render an analysis of the second element of the Policy meaningless. Section 2.3 of the [WIPO Overview 3.0](#) explains "Absent genuine trademark or service mark rights, evidence showing that a respondent is commonly known by the domain name may include: a birth certificate, driver's license, or other government-issued ID; independent and sustained examples of secondary material such as websites or blogs, news articles, correspondence with independent third parties; sports or hobby club publications referring to the respondent being commonly known by the relevant name; bills/invoices; or articles of incorporation."

Moreover, Respondent's website does not include any disclaimer of affiliation (or lack of affiliation) with Complainant. Thus, Respondent created a false impression that it was associated with Complainant. The misleading of Internet users demonstrates that Respondent did not have an intention to offer *bona fide* goods or services. See *Wikimedia Foundation, Inc. v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Olive Digital, supra*; *Microsoft Corporation v. Microsoft.com aka Tarek Ahmed*, WIPO Case No. [D2000-0548](#) ("by using a domain name and establishing a website deliberately designed to confuse Internet users and consumers regarding the identity of the seller of the goods and services, Respondent has not undertaken a *bona fide* or good faith offering of the goods and services.").

Lastly, Respondent's use of the Domain Name is not a "legitimate noncommercial or fair use" under paragraph 4(c)(iii) of the Policy, given that Respondent appears to have purported to offer unapproved creation and editing of Wikipedia pages for a profit from the website linked to the Domain Name. Such activity does not amount to a fan site, criticism or other activity that may be considered legitimate noncommercial or fair.

Accordingly, the Panel finds that Complainant established a *prima facie* showing of Respondent's lack of any rights or legitimate interests. Respondent did not rebut that showing. As provided for in paragraph 14 of the Rules, the Panel may draw such inference from Respondent's default as it considers appropriate. The Panel finds that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Policy under paragraph 4(b) provides a non-exhaustive list of factors that may be used when considering whether Respondent has registered and used the Domain Name in bad faith. Any of these factors may be used to show that the Domain Name has been used 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 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 web site or other on-line location, by creating a likelihood of confusion with Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

Complainant alleges that Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion between the Domain Name and Complainant's trademark.

Although Respondent did not respond to Complainant, the Panel may draw conclusions from the established facts in the Complaint. See *Harvey Norman Retailing Pty Ltd v. Oxford-University*, WIPO Case No. [D2000-0944](#).

Bad faith registration can be found where a respondent "knew or should have known" of a complainant's trademark rights and nevertheless registered a domain name in which it had no right or legitimate interest. See *Accor S.A. v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). Accordingly, the Panel finds that Respondent intentionally registered the Domain Name due to its knowledge of and familiarity with Complainant's Mark. Complainant first began using its WIKIPEDIA Mark in 2001 and registered its trademark with the United States Patent and Trademark Office in 2006. Complainant's website has consistently been one of the top visited websites in the world since. Respondent registered the Domain Name on April 8, 2021. Based upon a review of the content of the Domain Name's website, it is inconceivable that Respondent was ignorant of Complainant's WIKIPEDIA Mark and its services.

Paragraph 4(b)(iv) of the Policy provides that bad faith may be shown if “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 web site or location or of a product or service on your web site or location”. See *Identigene, Inc. v. Genetest Laboratories*, WIPO Case No. [D2000-1100](#) (finding bad faith where the respondent’s use of the domain name at issue to resolve to a website where similar services are offered to Internet users is likely to confuse the user into believing that the complainant is the source of or is sponsoring the services offered at the site); *MathForum.com, LLC v. Weiguang Huang*, WIPO Case No. [D2000-0743](#) (finding bad faith under paragraph 4(b)(iv) of the Policy where the respondent registered a domain name confusingly similar to the complainant’s mark and the domain name was used to host a commercial website that offered similar services offered by the complainant under its mark). As detailed above, Respondent’s alleged offering of commercial editing services demonstrate an intentional attempt to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with Complainant’s WIKIPEDIA Mark through creating a likelihood of confusion for Internet users as to the source, sponsorship or affiliation or endorsement of the website by the Complainant. Moreover, as seen above, the similarity between the Domain Name and Complainant’s WIKIPEDIA Mark, as well as the lack of disclaimer of affiliation (or a lack of an affiliation) on the website, indicates that Respondent intended to intentionally attract for commercial gain Internet users to its website by creating a likelihood of confusion with Complainant’s Mark.

Additionally, Panels have recognized that attempts by a respondent to hide their identity can be seen as further evidence of bad faith. See *The Saul Zaentz Company d/b/a Tolkein Enterprises v. Eurobox Ltd. / “The Saul Zaentz Company”*, WIPO Case No. [D2008-0156](#); *Wikimedia Foundation, Inc. v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Olive Digital, supra*. Similarly, here, Respondent has hidden its identity behind a privacy protection service.

The Panel holds that Complainant has met its burden of showing a preponderance of evidence that Respondent registered and is using the Domain Name in bad faith under paragraphs 4(a)(iii) and 4(b)(iv) 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 Domain Name, <wikipediapublisher.com>, be transferred to Complainant.

/John C. McElwaine/

John C. McElwaine

Sole Panelist

Date: May 25, 2022