

ADMINISTRATIVE PANEL DECISION

iHeartMedia, Inc., iHM Identity, Inc. v. Privacy service provided by
Withheld for Privacy ehf / champlin mauro, VISCUL
Case No. D2022-1486

1. The Parties

The Complainants are iHeartMedia, Inc., United States of America (“United States” or “U.S.”) and iHM Identity, Inc., U.S., represented by Schwegman Lundberg & Woessner, P.A., U.S.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / champlin mauro, VISCUL, U.S.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 26, 2022. On April 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 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 Complainants on April 27, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainants filed an amended Complaint on April 29, 2022.

The Center verified that the Complaint 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 May 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2022.

The Center appointed William R. Towns as the sole panelist in this matter on May 27, 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 Complainants in this proceeding are iHeartMedia, Inc., a Delaware corporation, and iHM Identity, Inc., a Texas corporation, each with headquarters in San Antonio, Texas. The Complainants operate one of the largest audio media companies in the United States. iHeartMedia, Inc. is the parent company of iHM Identity Inc., the latter being the collective holder of the Complainants' intellectual property rights. The Complainants are the holders of trademark registrations for their IHEART and IHEART MEDIA marks issued by the United States Patent and Trademark Office (USPTO), and include among the following:

- IHEART, U.S. Reg. No. 4444152, applied for December 18, 2010, and registered on December 3, 2013 (first use in commerce July 24, 2013); and

- IHEART MEDIA, U.S. Reg. No. 5492427, applied for September 16, 2014, and registered on June 12, 2018 (first use in commerce September 16, 2014).

The Complainants also assert unregistered common law rights in other IHEART or IHEART formative marks based on prior use dating back for at least ten years.

The disputed domain name was registered on August 10, 2021. The record reflects that the Respondent on or about September 3, 2021, used the disputed domain name to send an email fraudulently posing as an employee and recruiter for "IHARTMEDIA, INC" and inviting the recipient of the email to interview for a video editor position at iHeartMedia.

Shortly thereafter, on or about September 6, 2021, the Respondent, by email, offered the recipient employment, attaching an appointment letter requiring disclosure of private and confidential information including the prospective employee's passport, driver's license, and proof of address. The recipient was asked to sign and return the appointment letter and did so on September 9, 2021. Then, on September 10, 2021, the Respondent sent another email to the recipient requesting further information, including "Bank Enrollment Information", a "Direct Deposit Agreement Form", and routing and account numbers. But the recipient became suspicious and after inquiry was advised this most likely had been a fraudulent scam.

5. Parties' Contentions

A. Complainants

The Complainants submit that the disputed domain name <iheartmedia.careers> is identical or confusingly similar to the Complainant's IHEART and IHEART MEDIA marks. The Complainants emphasize that their rights in the IHEART and IHEART MEDIA marks had been established for many years before the Respondent registered the disputed domain name, which incorporates the Complainants' marks in their entirety. According to the Complainants, the Respondent's use of "careers" in the disputed domain name more likely than not would confuse or mislead consumers.

The Complainants assert that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The Complainants explain that the disputed domain name has been used by the Respondent with an automatically generated pay-per-click (PPC) Name Cheap parking page, with no effort made to disclaim responsibility for the content on the website. The Complainants maintain there is no evidence of the Respondent's use or preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, nor any evidence that the Respondent has been commonly known by the disputed domain name or otherwise possesses trademark or service mark rights.

The Complainants contend that the disputed domain name was registered and is being used in bad faith. The Complainants stress that the disputed domain name was registered on August 10, 2021, more than 10 years after the Complainants' adoption and first use of its well-known IHEART and IHEART MEDIA marks. The Complainants confirm that the disputed domain name has been pointed to a Name Cheap parking page and used for fraudulent email correspondence.

According to the Complainants, the Respondent on September 3, 2021, sent an email solicitation using "[...].@iheartmedia.careers" and posing as a recruiter for iHeart Media (the Complainants). The recipient was invited to interview for a video editor position, and sent a "pre-job" briefing document requesting a copy of the recipient's passport, driver's license and proof of address. The email signature was represented to be the actual employee of the iHeart Media Human Resources Department. At some point, however, the recipient became suspicious that he was not corresponding with the Complainants but instead had been the subject of an attempted fraud and scam.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Preliminary Issue: Consolidation of Multiple Complainants

The Complainants in this administrative proceeding have been jointly filed by iHeartMedia, Inc. and iHM Identity, Inc. As described in WIPO Overview of WIPO Panel Views On Selected UDRP Questions, Third Edition ("WIPO" Overview 3.0), section 4.11.1, when assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look to see whether the complainants have a specific common grievance against the respondent, and whether in view of the attendant circumstances consolidation would be equitable and procedurally efficient.

As previously noted, iHeartMedia, Inc. is the parent company of iHM Identity, Inc., with the latter being the collective holder of the Complainants' intellectual property rights, including the Complainants' registered IHEART and IHEART MEDIA marks. In view of the foregoing, the Panel considers that the Complainants have demonstrated a "common legal and business interest" in the IHEART and IHEART MEDIA marks, and observes that previous decisions under the Policy have allowed consolidation of multiple complainants in similar proceedings. See, e.g., *Dareos LTD. and Dareos INC. v. Pavel Balabanov et al.*, WIPO Case No. [D2020-0133](#). Accordingly, the Panel concludes that consolidation of multiple Complainants is procedurally efficient and would be fair and equitable to all parties.

7. Discussion and Findings

A. Scope of the Policy

The Policy is addressed to resolving disputes concerning allegations of abusive domain name registration and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. [D2002-0774](#). Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of "the abusive registration of domain names", also known as "cybersquatting". *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. [D2000-0187](#). See Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169-177. The term "cybersquatting" is most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of rights in trademarks or service marks. *Id.* at paragraph 170. Paragraph 15(a) of the Rules provides that the panel shall decide a complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules, and any other rules or principles of law that the panel deems applicable.

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

- (i) the 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 with respect to the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Cancellation or transfer of the domain name is the sole remedy provided to the complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(b) of the Policy sets forth four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy in turn, identifies three means through which a respondent may establish rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized this could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the respondent. Thus, the view is that the burden of production shifts to the respondent to come forward with evidence of a right or legitimate interest in the domain name, once the complainant has made a *prima facie* showing. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 2.1. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

B. Identical or Confusingly Similar

The Panel finds that the disputed domain name <iheartmedia.careers> is confusingly similar to the Complainants’ IHEART mark and identical to the Complainants’ IHEART MEDIA mark, in each of which the Complainants have established rights through registration and long and extensive use of its marks. In considering identity and confusing similarity, the first element of the Policy serves essentially as a standing requirement.¹ The threshold inquiry under the first element of the Policy involves a relatively straightforward comparison between the complainant’s trademark and the disputed domain name.

The Complainants’ IHEART and IHEART MEDIA marks are recognizable in the disputed domain name.² The inclusion in the disputed domain name of the word “careers” does not dispel the confusing similarity of the disputed domain name to the Complainants’ marks. See, e.g. *Instagram, LLC v. Temp name Temp Last Name, Temp Organization*, WIPO Case No. [D2019-0109](#). See also *Instagram, LLC v. A S*, WIPO Case No. [D2020-1327](#). When the relevant trademark is recognizable in the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not preclude a finding of confusing similarity under paragraph 4(a)(i) of the Policy.³ Top Level Domains (TLDs), in this instance “.careers”, generally are disregarded when evaluating the identity or confusing similarity of the Complainants’ mark to the disputed domain name under paragraph 4(a)(i) of the Policy, irrespective of any ordinary meaning that might be ascribed to the TLD.⁴

Accordingly, the Panel finds the Complainants have satisfied the requirements of paragraph 4(a)(i) of the Policy.

¹ See [WIPO Overview 3.0](#), section 1.7.

² See [WIPO Overview 3.0](#), section 1.8 and cases cited therein.

³ *Id.*

⁴ See [WIPO Overview 3.0](#), section 1.11.

C. Rights or Legitimate Interests

As noted above, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, paragraph 4(c) shifts the burden of production to the respondent to come forward with evidence of rights or legitimate interests in a domain name. The Panel is persuaded from the record of this case that a *prima facie* showing under paragraph 4(a)(ii) of the Policy has been made. It is undisputed that the Respondent has not been authorized to use the Complainants' IHEART and IHEART MEDIA marks. The Respondent notwithstanding has registered and used the disputed domain name, misappropriating the Complainants' IHEART and IHEART MEDIA marks. As previously noted, the disputed domain name does not appear to resolve to any active website and has been passively held by the Respondent.

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is 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 Respondent has not submitted a formal response to the Complaint, in the absence of which the Panel may accept all reasonable inferences and allegations in the Complaint as true. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#). The Panel has carefully reviewed the record in this case, and finds nothing therein that would bring the Respondent's registration and use of the disputed domain name within any of the "safe harbors" of paragraph 4(c) of the Policy.

The Panel concludes from the record that the Respondent was aware of and had the Complainants' IHEART and IHEART MEDIA marks firmly in mind when registering the disputed domain name. As previously noted, the Respondent has acted with fraudulent intent and has brought forward no credible evidence of use or of any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. See [WIPO Overview 3.0](#), section 2.2 and cases cited therein.

Nor in the attendant circumstances can the Respondent claim to be making a legitimate noncommercial or fair use of the disputed domain name. A respondent's use of a domain name cannot be considered "fair" if it falsely suggests affiliation with the trademark owner, and UDRP panels generally have found that a domain name appropriating a complainant's trademark plus an additional term (in this case "careers") carries a risk of implied affiliation if it effectively suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), sections 2.5 and 2.5.1. The use of a domain name cannot be "fair" if it suggests a non-existent affiliation with the trademark owner; nor can a use be "fair" if it is pretextual. See *201 Folsom Option JV, L.P. and 201 Folsom Acquisition, L.P. v. John Kirkpatrick*, WIPO Case No. [D2014-1359](#); *Project Management Institute v. CMN.com*, WIPO Case No. [D2013-2035](#).

In view of the foregoing, the Panel concludes that the Respondent has neither used nor demonstrated preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, and is not making a legitimate noncommercial or fair use of the disputed domain name. Moreover, there is no indication that the Respondent has been commonly known by the disputed domain name at any time within the meaning of paragraph 4(c)(ii) of the Policy.

Accordingly, the Panel finds the Complainants have satisfied the requirements of paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent 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 the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For the reasons discussed under this and the preceding heading, the Panel concludes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy. The Panel concludes that the Respondent was aware of the Complainants and had the Complainants' IHEART and IHEART MEDIA marks in mind when registering the disputed domain name. The Panel further finds that the Respondent registered the disputed domain name with the *mala fide* intention to exploit and profit from the Complainants' trademark rights.

What might now appear to be the Respondent's passive holding of the disputed domain name does not preclude a finding of bad faith in the attendant circumstances of this case. As set forth in *Telstra Corporation Limited v. Nuclear Marshmallows, supra*, "the relevant issue is not whether the Respondent is taking a positive action in bad faith in relation to the domain name, but instead whether, in all the circumstances of the case, it can be said that the Respondent is acting in bad faith. [...] [I]t is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith". See also *Red Bull GmbH v. Kevin Franke*, WIPO Case No. [D2012-1531](#). The Panel finds such circumstances to be present in this case.

Accordingly, the Panel finds that the Complainants have satisfied the requirements 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, <iheartmedia.careers> be transferred to the Complainants.

/William R. Towns/

William R. Towns

Sole Panelist

Date: June 8, 2022