

## **ADMINISTRATIVE PANEL DECISION**

Udemy, Inc. v. Domains By Proxy, LLC / cxvxcvxc fdgfdgdf  
Case No. D2022-1489

### **1. The Parties**

The Complainant is Udemy, Inc., United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

The Respondent is Domains By Proxy, LLC, United States / cxvxcvxc fdgfdgdf, Afghanistan.

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

The disputed domain name <udemydl.com> 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 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 27, 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 May 3, 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 May 5, 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 May 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 9, 2022. The Respondent sent an email communication to the Center on May 5, 2022, but did not submit a formal Response. On June 21, 2022, the Center informed the Parties that it will proceed to panel appointment process.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on June 24, 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 was founded in 2010 and is an online course provider available in 75 languages and counting with over 49 million users from 180 different countries. In addition to its main website at <udemy.com>, registered on August 13, 2009, the Complainant owns the following trademark registrations:

- European Union trademark registration No. 011006319 for the word mark UDEMY, registered on November 28, 2012, in classes 9, 35, 38, 41 and 42;

- United States trademark registration No. 4,314,406 for the word mark UDEMY, registered on April 2, 2013, in classes 9, 35, 38, 41 and 42; and

- Australian trademark registration No. 1704475 for the word mark UDEMY, registered on July 21, 2014, in classes 9, 35, 38, 41 and 42.

The disputed domain name <udemydl.com> was registered on January 17, 2019 and both at the time of the submission of the Complaint and presently resolves to a webpage offering online courses and coupons to the Complainant's courses.

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

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

The Complainant claims to be a leading online course provider offering over 480 million courses in 75 languages and counting with over 49 million learners utilizing its platforms across more than 180 countries. Currently employing approximately 5,000 employees it has had a revenue of USD 653.9 million as of 2021.

The Complainant further asserts to have received much public recognition since its creation in 2010, having been awarded in the 'Top 250 Best-Led Companies' in 2021 (Annex 8 to the Amended Complaint).

Under the Complainant's view, the disputed domain name replicates the distinctive UDEMY trademark plus the letters "dl", likely referring to the word 'download', what does not prevent a finding of confusing similarity under the Policy.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

(i) to the best of the Complainant's knowledge, the Respondent is not commonly known and does not have any trademark rights to the term "udemy" or any other terms used in the disputed domain name; there also being no evidence that the Respondent retains unregistered trademark rights to the term "udemy" or any other terms used in the disputed domain name;

(ii) the Respondent has not received any license from the Complainant to use domain names featuring the UDEMY trademark, nor is the Respondent an authorised affiliate for the Complainant, nor has it received any authorisation from the Complainant to offer 'coupon codes' for the "Udemy" service;

(iii) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, rather showing a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademark owned by the Complainant, given that that the Respondent is using

the disputed domain name to host a website advertising and propagating services related to those offered by the Complainant, also purportedly offering 'coupon codes' for the Complainant's platform (Annex 12 to the Amended Complaint);

(iv) there is no disclaimer on the webpage available at the disputed domain name which would alert users to the fact that the disputed domain name is not affiliated with or endorsed by the Complainant;

(v) the webpage available at the disputed domain name initially used a red colour scheme, matching that previously used by the Complainant; however, the Respondent now uses a purple and black colour scheme, matching the current UDEMY branding what indicates that the Respondent is clearly aware of the distinctive UDEMY brand and is misusing the trademark for commercial gain.

As to the registration and use of the disputed domain name in bad faith, the Complainant states that:

(i) the Respondent knew of the Complainant's well-known trademark when registering the disputed domain name given not only the offer of the Complainant's courses and purportedly coupons to the Complainant's courses but also given that the webpage available at the disputed domain name initially used a red colour scheme, matching that previously used by the Complainant; however, the Respondent now uses a purple and black colour scheme, matching the current UDEMY branding what indicates that the Respondent is clearly aware of the distinctive UDEMY brand and is misusing the trademark for commercial gain;

(ii) the Respondent has not replied to a cease-and-desist letter sent on the Complainant's behalf (Annex 16 to the Amended Complaint), which constitutes further evidence that the Respondent knowingly acts in bad faith;

(iii) the Respondent's bad faith behaviour can be inferred from the Respondent's use of clearly false details when registering the disputed domain name given that behind the privacy service, the Respondent's purported name is 'cxvxcvxc fdgfdgdf' with an address of 'dfgdfhfgdgh, cvxbx, vcbc, 14 32456, AF', clearly fabricated name and address.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions. On May 5, 2022, the Respondent sent an informal message saying that it wanted to sell the disputed domain name and inquiring whether the Complainant would like to buy it.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

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

The Complainant has established rights over the UDEMY trademark.

The disputed domain name incorporates the Complainant's trademark in its entirety with the addition of the letters "d" and "l". See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

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

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed 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 (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent that the Respondent has not received any license from the Complainant to use domain names featuring the UDEMY trademark, nor is the Respondent an authorised affiliate for the Complainant, nor has it received any authorisation from the Complainant to offer 'coupon codes' for the "Udemy" service.

Also according to the evidence submitted by the Complainant, the use made of the disputed domain name in connection with a webpage offering purportedly free courses and coupons to the Complainant's courses, without any disclaimer as to the lack of relationship between the parties, does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

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

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv) in view of the composition and use of the disputed domain name in connection with a webpage purportedly offering free courses and coupons for the Complainant's courses thus creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement thereof.

Other factors that corroborate the Panel's finding of bad faith of the Respondent are:

- a. the absence of a formal Response by the Respondent;
- b. the lack of reply to the cease-and-desist letter sent to the Respondent prior to this procedure;
- c. the indication of the Respondent's intent to sell the disputed domain name to the Complainant;
- d. the choice to retain a privacy protection service so as to conceal the Respondent's identity; and
- e. the indication of what appears to be false or incomplete contact details provided in Whois information relating to the disputed domain name, communication not being delivered to it by courier.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

## **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 <udemydl.com> be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: July 8, 2022