

## **ADMINISTRATIVE PANEL DECISION**

### **Digicel Caribbean Limited and Digicel Jamaica Limited v. Kaedri Goss Case No. D2022-3599**

#### **1. The Parties**

The Complainants are Digicel Caribbean Limited, Barbados and Digicel Jamaica Limited, Jamaica, represented by Jones Day, United States of America (“United States”).

The Respondent is Kaedri Goss, Jamaica.

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

The disputed domain name <jamaicaloop.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 September 28, 2022. On September 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 30, 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 (Domains By Proxy, LLC). The Center sent an email communication to the Complainant on October 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 amendment to the Complaint on October 3, 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 October 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2022. The Respondent sent an informal email communication to the Center on October 6, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on November 3, 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 first Complainant Digicel Caribbean Limited was founded in 2001 in Jamaica. The second Complainant is Digicel Jamaica Limited (the "Complainant"). The companies are dedicated to providing digital communications and entertainment products and services.

The first Complainant is a digital operator that offers digital communications and entertainment products and services in connection with mobile communications, business solutions and home broadband and TV in over 30 markets in the Caribbean and Central America. The first Complainant operates in more than 25 markets, including Jamaica, Barbados, Guyana, Panama, Haiti, Trinidad and Tobago, and Saint Lucia..

The second Complainant (related to the first one) operates a free news website called "Loop News" located at <jamaica.loopnews.com> and <loopjamaica.com> (which redirects to <jamaica.loopnews.com>), which provides news and related content for Jamaican and Caribbean residents. The Loop News website was launched in 2014 and is a source for Caribbean-wide, local, regional and global content. In particular, it provides coverage of news, sports, entertainment, lifestyle, business, community and events. According to the Complaint, Loop News has grown across six markets in the Caribbean, namely, Jamaica, Trinidad and Tobago, Barbados, Haiti, Cayman Islands and Saint Lucia.

The Complainant is the owner of the LOOP trademark registered in Jamaica in the year 2014 (Jamaican Trade Mark Registration No. 64544). The trademark LOOP has also been registered in Anguilla and Virgin Islands.

The Disputed Domain Name was registered on February 12, 2021 and is currently used for a news website residents featuring without authorization the LOOP trademark.

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

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

The Complainant requests that the disputed domain name be transferred to the Complainant.

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the LOOP trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith. According to the Complaint, the Respondent clearly knew of the Complainant's LOOP trademark at the time it registered and used the disputed domain name, as evidenced by the Respondent's duplication of the LOOP trademark in the disputed domain name and in the prominent use of the logo in the header and footer of the website at the disputed domain name to offer services that compete with Complainants.

## **B. Respondent**

On October 6, 2022, the Respondent sent an email to the Center acknowledging receipt of the communication.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

(i) the 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 such domain name; and

(iii) the domain name has been registered and is being used in bad faith.

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

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Complainant holds several valid LOOP trademark registrations, which precede the registration of the disputed domain name.

The disputed domain name is confusingly similar to the Complainant's trademarks since it merely reproduces the LOOP trademark with the addition of the geographical term "Jamaica", a term related to Complainant's jurisdiction.

The disputed domain name incorporates the Complainant's LOOP trademark in its entirety. As numerous UDRP panels have held, where at least a dominant feature of the relevant trademark is recognizable in the domain name, it is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark.

The Panel finds the first element of the Policy has therefore been met.

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

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

(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.

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks which precede the Respondent's

registration of the disputed domain name. The Respondent is not using the disputed domain name which cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

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

The Complainant must prove both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the domain name in bad faith has been considered by the Panel. These allegations have not been contested by the Respondent.

As indicated above, the Complainant's rights in the LOOP trademark predate the registration of the disputed domain name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the disputed domain name, as the Complainant's LOOP trademark is widely used in the Caribbean region. Thus, the Respondent could not reasonably ignore the reputation of the products and services this trademark identifies. The Respondent in all likelihood registered the disputed domain name with the expectation of taking advantage of the reputation of the Complainant's trademark.

According to the evidence provided in the Complaint, the trademark was registered and is currently used in Jamaica, where the Respondent seems to be located, long before the registration of the disputed domain name. In addition, the Respondent added the term "Jamaica" to the disputed domain name and provided content related to news, all evidence that the Respondent was aware of the Complainant activities and its trademark rights.

With respect to use in bad faith, the Panel visited the disputed domain name as was able to verify that the disputed domain name resolves to a website that contains the LOOP trademark in red (the same color as the Complainant's website). The trademark is mentioned in the header and footer of the website at the disputed domain name. The disputed domain name also offer a news services that competes with Complainant service under the LOOP trademark. Thus, Respondent is using the disputed domain name in bad faith.

Therefore, taking all the circumstances into account and for all the above reasons, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: November 10, 2022