

ADMINISTRATIVE PANEL DECISION

The Knowledge Academy Holdings Limited v. Host Master, Transure Enterprise Ltd
Case No. D2022-3719

1. The Parties

The Complainant is The Knowledge Academy Holdings Limited, United Kingdom, represented by Pinsent Masons LLP, United Kingdom.

The Respondent is Host Master, Transure Enterprise Ltd, United States of America ("USA").

2. The Domain Name and Registrar

The disputed domain name <theknowledgeacademy.com> is registered with Above.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 5, 2022. On October 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 18, 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 October 18, 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 October 19, 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 October 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 11, 2022.

The Center appointed Frank Schoneveld as the sole panelist in this matter on November 17, 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 is a company registered in England and Wales incorporated on July 4, 2013, and is the holding company of The Knowledge Academy Limited, a company incorporated on April 1, 2009 and which is a business and IT training company providing training solutions to corporate, public sector, multinational organisations and private individuals. The Complainant offers its services through, amongst other things, its website “www.theknowledgeacademy.com”.

The Complainant owns, amongst others, the following trademark registration for THE KNOWLEDGE ACADEMY:

- United Kingdom trademark Registration No. UK00003104125, registered on July 17, 2015;
- European Union trademark Registration No. 018157130, registered on May 22, 2020;
- USA trademark Registration No. 87379556, registered on February 6, 2018.

The Complainant has been, since March 2009, the registrant of two domain names (that incorporate its trademark) <theknowledgeacademy.com> and <theknowledgeacademy.co.uk>.

The disputed domain name was registered on August 24, 2022, and it displays links to various online educational programs, as well as a button stating “Buy this domain”.

The Complainant was unaware of the language of the registration agreement for the disputed domain name, however the Registrar confirmed to the Center by email of October 18, 2022 that the language of the registration agreement is English.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is nearly identical to the Complainant's trademarks with the only difference being the omission of the letter “m” near the end of the disputed domain name in the word “academy”. The Complainant contends that this omission has likely been done to exploit spelling mistakes made by web users trying to reach the websites belonging to the Complainant and the difference with the disputed domain name “would be discounted and ignored by consumers” so that the disputed domain name is in effect identical to the Complainant's trademarks. The Complainant argues that the disputed domain name visually is highly similar to the Complainant's trademarks (a) since there is only one letter difference and the “acadey” is not a real word so consumers would perceive the disputed domain name is highly similar despite the missing “m”, and (b) since the omission of the letter “m” is not distinctive in its own right and is likely to be disregarded by consumers, meaning the word “acadey” will be perceived as “academy”. and (c) since consumers may not notice the misspelling and this is likely to lead to an increased risk of confusion due to the high similarity between the disputed domain name and the Complainant's trademark.

The Complainant also contends that aurally the disputed domain name is highly similar to the Complainant's trademark because “acadey”, shares the first three of the four syllables in the word “academy” and given the importance of the beginning of words, the average consumer would likely discount the final syllable in “academy” and consider the disputed domain name to be highly similar aurally also. The Complainant submits that the last part of the disputed domain name “acadey” is an invented word and has no conceptual

meaning so users will likely misread the disputed domain name to be the Complainant's Mark, and, therefore, read the disputed domain name as "academy".

The Complainant contends that:

- the goodwill associated with the Complainant's trademark THE KNOWLEDGE ACADEMY is the property of the Complainant and cannot pass to any third party without a formal assignment, however no such assignment in favour of the Respondent has taken place;
- it is not aware of the Respondent using the disputed domain name in connection with the offering of goods or services prior to registration of the disputed domain name, and nor is it aware that the Respondent is commonly known by the disputed domain name;
- it is reasonable to conclude that the Respondent registered the disputed domain name knowing that it is likely to attract interest from Internet users who are searching for the Complainant; and
- it is not possible for the Respondent to have acquired any legitimate right to use the disputed domain name since its registration, or before registration.

The Complainant concludes that the above shows the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant submits that the disputed domain name was registered and is being used in bad faith because:

- given the widespread use and reputation of the Complainant's trademarks, the Respondent must have been aware that in registering the disputed domain name it was misappropriating the valuable intellectual property of the Complainant.
- the disputed domain name is currently redirecting users to pages showing that the user has won a gift and with links to various online education programs. There is also a link at the bottom of the second page stating "Buy this domain", which redirects the user to a marketplace page in which users can make an offer to purchase the disputed domain name.
- it is reasonable to conclude that the Respondent is targeting consumers with a view to looking to sell the disputed domain name (this is colloquially known as "domain squatting" or "cybersquatting") and/or to obtain user data through completing a form to receive a "gift".
- it is reasonable to conclude that the disputed domain name has been registered in bad faith for illegitimate purposes in order to infringe the Complainant's trademarks; to use the website hosted at the disputed domain name as a means to deceive consumers as described above, including into believing the Respondent and the Complainant are connected.
- the Respondent will never be capable of using the disputed domain name for a legitimate purpose as the notoriety and reputation of the Complainant's trademark THE KNOWLEDGE ACADEMY is such that members of the public will always assume that there is an association between the Respondent and the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant is the owner of the trademark THE KNOWLEDGE ACADEMY in different jurisdictions including in the United Kingdom where it was registered on July 17, 2015, and in the USA (registered on February 6, 2018). The Respondent registered the disputed domain name on August 24, 2022 more than seven years after registration in the United Kingdom of the Complainant's trademark THE KNOWLEDGE ACADEMY. The Complainant's trademark and the disputed domain name are almost identical, the only difference being that, in the later registered disputed domain name the second last letter ("m") has been omitted. The absence of this one letter in the last word of what appears to be a three word domain name, is sufficient to make the disputed domain name confusingly similar to the Complainant's trademark.

The Panel accepts that the omission of the letter "m" is a misspelling of the Complainant's trademark, is not distinctive and is likely to be disregarded by Internet users, so that the third word of the disputed domain name "acadey" will be perceived by Internet users as 'academy' thereby confusing them to believe that the Complainant's trademark and the disputed domain name are the same and/or have the same origin or association when clearly they do not.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark THE KNOWLEDGE ACADEMY.

B. Rights or Legitimate Interests

There is no evidence before the Panel to suggest that the Respondent has any right or legitimate interest in the disputed domain name. The Complainant is the owner of the trademark THE KNOWLEDGE ACADEMY to which the disputed domain name is confusingly similar. The Complainant has never made an assignment of any right in this trademark to the Respondent. The Complainant has no knowledge of the Respondent using the disputed domain name in connection with the offering of goods or services prior to registration of the disputed domain name. There is nothing to indicate that the Respondent is commonly known by the disputed domain name. Further, the failure of the Respondent to respond to the Complainant's contentions suggests that the Respondent has no right or legitimate interest in the disputed domain name.

In view of the foregoing, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Given registration of the Complainant's very similar trademark at least four years prior to registration of the disputed domain name, particularly the trademark registration in the USA (where the Respondent has its address), the Respondent must have been aware that in registering the disputed domain name it was likely in breach of rights attached to the trademark of the Complainant. A simple trademark search, or a search using an Internet search engine, would have led the Respondent to this.

The website to which the disputed domain name resolves has been redirecting Internet users to pages showing (a) that the user has won a gift, and (b) links to various online education programs that are within one of the classes of services provided by the Complainant and for which the Complainant registered its trademark THE KNOWLEDGE ACADEMY, and (c) a link at the bottom of the second page stating "Buy this domain", which redirects the user to a marketplace page in which users can make an offer to purchase the disputed domain name. This shows that the Respondent is trading off the Complainant's trademark by intentionally attempting to attract, for commercial gain, Internet users to the website, by creating a likelihood of confusion with the Complainant's trademark as to, at least, an endorsement of the website and the services offered on the website.

In the absence of any submission from the Respondent, the Panel finds that this evidence amounts to registration and use of the disputed domain name in bad faith.

7. Decision

More than four years prior to registration of the disputed domain name, the Complainant registered in a number of countries including in the USA (where the Respondent has its address) a trademark that is substantially the same as the disputed domain name. The only difference between the two is the omission of the second last letter ("m") from the Complainant's trademark, so the disputed domain name is confusingly similar to the Complainant's trademark. Nothing before the Panel suggests the Respondent might have any rights or legitimate interest in the disputed domain name. The website to which the disputed domain name resolves, offers gifts, purchase of the disputed domain name, and links to educational services similar to those marketed by the Complainant. The Respondent is then, using the disputed domain name to 'trade-off' the Complainant's trademark, amounting to registration and use of the disputed domain name in bad faith.

For all of 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 <theknowledgeacademy.com> be transferred to the Complainant.

/Frank Schoneveld/

Frank Schoneveld

Sole Panelist

Date: November 30, 2022