

ADMINISTRATIVE PANEL DECISION

Grammarly Inc. v. Dmitiq Rendel
Case No. D2023-0401

1. The Parties

Complainant is Grammarly Inc., United States of America (“United States”), represented by BrandIT GmbH, Switzerland.

Respondent is Dmitiq Rendel, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <ggrammarly.com> is registered with Eranet International Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2023. On January 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 6, 2023, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to Complainant on February 7, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 10, 2023.

The Center verified that the Complaint together with an 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 February 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 8, 2023.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on March 14, 2023. 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, Grammarly Inc., provides a writing and grammar checking online tool since 2009, with both free and paid versions of the software, popular in the academic environment.

Complainant operates a primary website using the domain name <grammarly.com> and owns numerous domain names consisting of or incorporating its GRAMMARLY marks, including but not limited to <grammarly.net>; <grammarly.info>; <grammarly.org>; <grammarly.us>; <grammarly.biz>; <grammarly.ai>; <grammarly.asia>; <grammarly.cn>; and <grammarly.hk>.

Complainant owns a wide portfolio of trademark registrations in the United States and other countries containing the word mark GRAMMARLY. Some examples of Complainant's trademark registrations can be found below:

Registration No.	Trademark	Jurisdictions	International Classes	Registration Date
4157748	GRAMMARLY	United States	9, 41, and 42	June 12, 2012
018663801	GRAMMARLY	European Union	25	June 22, 2022
UK00003759837	GRAMMARLY	United Kingdom	25	May 20, 2022

The disputed domain name was registered on December 7, 2022, and, according to the evidence submitted by the Complainant, used to resolve to a copycat version of the Complainant's official website. The disputed domain name currently resolves to a webpage without content.

5. Parties' Contentions

A. Complainant

Complainant pleads that the disputed domain name <gnammarly.com> is almost identical and confusingly similar to Complainant's registered trademark GRAMMARLY. The only difference between the disputed domain name and Complainant's trademark is the transposition of the letters "r" and "n" in the disputed domain name, not enough to distinguish from Complainant's trademark, creating a risk of association, fulfilling paragraph 4(a)(i) of the Policy and paragraph 3(b)(viii) and 3(b)(ix)(1) of the Rules.

Complainant affirms that Respondent has never been authorized by Complainant to register or use Complainant's GRAMMARLY registered trademark or to apply for or use any domain name incorporating such trademark. According to Complainant, Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, or in a legitimate noncommercial or fair manner. At the time of filing the Complaint, a copycat version of Complainant's website <grammarly.com> was displayed (Annex 8). At the time of filing the Amended Complaint, the disputed domain name resolves to a website without content (Annex B). This way, Complainant states that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(2) of the Rules has been fulfilled.

In addition, Complainant states that Respondent would not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant's trademark GRAMMARLY as a domain name nor is Respondent associated with Complainant. Complainant states that Respondent registered the disputed domain name to free ride on Complainant's renown, and now presents behavior of passive holding.

Thus, the requirement for the registration and use of the disputed domain name is fulfilled, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

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

The burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the complaint.

A. Identical or Confusingly Similar

Complainant has duly proven that it owns prior trademark rights for GRAMMARLY, and that the disputed domain name <gnammarly.com> combines a misspelling of Complainant's GRAMMARLY mark with a transposition of the letters "r" and "n" in the disputed domain name with a generic Top-Level Domain ("gTLD") ".com".

According to the section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the gTLD ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Misspelling a mark in a domain name such as the transposition of one letter does not prevent the domain name containing that misspelling being confusingly similar to a complainant's mark. Changing a letter "r" for a letter "n" does not prevent the disputed domain name to be confusingly similar to Complainant's mark as such typo is merely a substitution of similar-appearing characters.

This is summarized in section 1.9 of [WIPO Overview 3.0](#) as follows: "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. Under the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the

complainant.”

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant’s trademark GRAMMARLY, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of [WIPO Overview 3.0](#) as follows: “[w]hile the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant’s contentions, the Panel has considered Complainant’s un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* use that could demonstrate rights or legitimate interests, since the evidence shows that the disputed domain name currently resolves to a website without content, as duly proven by the Annex B to the Amendment to the Complaint. The use of a confusingly similar disputed domain name to mislead unsuspecting Internet users to a website without content, cannot constitute fair use. Moreover, given the previous use of a copycat website by Respondent, as proven by Annex 8 of Complaint, the disputed domain name is inherently misleading and cannot constitute fair use.

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that misspells Complainant’s trademark GRAMMARLY, altering the letter “r” for the letter “n”. The Panel finds that it was duly demonstrated that Respondent was likely aware of Complainant’s rights to GRAMMARLY at the time of the registration, as Complainant’s trademark is widely known and enjoys an international reputation. Moreover, the previous use of the disputed domain name as a copycat version of Complainant’s website (see Annex 8 of the Complaint), exposes the likelihood of Respondent’s knowledge of Complainant’s trademark and a clear intent to take a free ride on the Complainant’s renown.

Further, evidence (see Annex B of the Amendment to the Complaint) shows that the disputed domain name resolves to a website without content. Previous UDRP panels have concluded in similar cases that such non-use does not prevent a finding of bad faith use by the passive holding doctrine. See *BPCE v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / pascale kiss, cherhgi*, WIPO Case No. [D2021-1251](#):

“The disputed domain name does not resolve to an active website, however, Internet browsers warn of potential deceptive or phishing use when Internet users attempt to access the disputed domain name.

Prior UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#).”

As discussed in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), there are five circumstances that indicate if the passive holding of a domain name could be regarded as bad faith:

- “(i) the Complainant’s trademark has a strong reputation and is widely known [...],
- (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,
- (iii) the Respondent has taken active steps to conceal its identity [...],
- (iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and
- (v) taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate [...].”

Considering all of the items listed above, the Panel finds that at least items (i), (ii) and (v) are present in this case, since (i) Complainant enjoys a well-known reputation for the trademark GRAMMARLY; (ii) Respondent has not responded to Complainant’s contentions, failing to provide evidence of the use in good faith of the disputed domain name; and (v) there is no plausible use of the disputed domain name that would not represent bad faith, especially considering that it is composed of Complainant’s trademark GRAMMARLY misspelled. Thus, the circumstances of the present case support a finding of bad faith.

Moreover, it should be noted that, in the circumstances, Respondent’s lack of response further reinforces that the disputed domain name most likely was registered and is being used in bad faith. In this sense, the panel found in *Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Alexis Kane*, WIPO Case No. [D2021-0912](#) that:

“The following factors were also considered by the Panel as indicative of bad faith registration and use of the disputed domain name: (i) the Respondent’s lack of response to the Complaint. See, *Awesome Kids LLC and/or Awesome Kids L.L.C. v. Selavy Communications*, WIPO Case No. [D2001-0210](#); (ii) the Respondent’s lack of response to the cease and desist letter sent by the Complainant. See, e.g. *Intesa Sanpaolo S.p.A. v. Ekkert Ida*, WIPO Case No. [D2018-2207](#); (iii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name as per paragraph 4(b) of the Policy.”

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) of the Policy is satisfied.

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, <gnammarly.com>, be transferred to Complainant.

/Gabriel F. Leonardos/
Gabriel F. Leonardos
Sole Panelist
Date: March 28, 2023