

## **ADMINISTRATIVE PANEL DECISION**

Highervisibility, LLC v. Dino Andrade  
Case No. D2025-0203

### **1. The Parties**

Complainant is Highervisibility, LLC, United States of America (“United States”), represented by Evans Petree PC, United States.

Respondent is Dino Andrade, United States.

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

The disputed domain name <highervisibilityllc.com> (hereinafter “Disputed Domain Name”) is registered with Domain.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 17, 2025. On January 20, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same day, 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 Complainant on January 21, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on January 31, 2025.

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 Respondent of the Complaint, and the proceedings commenced on February 3, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 23, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 24, 2025. The Respondent submitted an informal communication on February 25, 2025.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on February 25, 2025. 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 registered the domain name <highervisibility.com> on March 20, 2002.

Complainant owns two United States trademark registrations for HIGHERVISIBILITY (hereinafter the "Mark"):

- United States Trademark Registration No. 7220890 (registered November 21, 2023) for "Conducting business audits in the field of communications; Consulting services in the field of search engine optimization for sales promotion; Consulting in sales techniques and sales programmes; Pay per click (PPC) advertising management services; Providing marketing consulting in the field of social media" in Class 35, and
- United States Trademark Registration No. 7089225 (registered June 27, 2023) for "Creating, designing and maintaining web sites" in Class 42.

These registrations both state that the Mark was first used in commence on February 28, 2009, although Complainant also offers a screenshot of a webpage associated with its website dated 2004.

The Complaint does not make any allegations in the Complaint or offer any evidence in annexes to describe the character, scope, or quantity of Complainant's services and instead relies entirely on the service descriptions recited in its trademark registrations.

The Disputed Domain Name was registered March 15, 2023. Complainant offers images (copied from the Internet Archive) of webpages associated with the Disputed Domain Name (hereinafter sometimes "Disputed Webpages").

At the top of the Disputed Webpages landing page, Respondent uses as a title:

"Highervisibility  
Solution  
Exploring AI technology  
A Complete Digital Marketing Agency"

Respondent also displays a logo:



On these webpages, Respondent offers a variety of services, some of which, such as search engine optimization, and web site design, overlap with the services described in Complainant's trademark registrations. However, many of the services offered on the Disputed Webpages are different from those described in Complainant's trademark registrations. For example, the Disputed Webpages offer services relating to "Leads Marketing," "Real Estate Marketing," and "Trucking Dispatch Services." Complainant's trademark registrations do not explicitly describe these services, and Complainant does not allege that it offers them.

Respondent also uses the domain name <hvllc.online>. The annexes attached to the Complaint include screenshots of Respondent's logo on the <hvllc.online> website. Complainant also offered screenshots of results of Google searches for "hvllc.online." This evidence is limited to the summary results page and does

not include evidence of the content of the linked webpages. These results suggest that Respondent uses <hvllc.online> to offer services similar to those offered on the Disputed Webpages. One of the search results listed says “HigherVisibility Solution | Lahore.”

On September 13, 2023, Complainant sent an email to email addresses associated with the Disputed Domain Name, giving notice of Complainant’s claim of trademark rights, and asserting that “You are impersonating our company, which is generating complaints.” Complainant demanded that the website be taken down and that the Disputed Domain Name be transferred to Complainant.

One year later, on September 14, 2024, Complainant’s counsel sent a cease-and-desist letter to an email address associated with <hvllc.online> that provided notice of Complainant’s trademark rights and registrations, alleged infringement and demanded cessation of the infringement, threatened litigation and demanded transfer of the Disputed Domain Name.

In subsequent email exchanges, Complainant’s counsel asked for the “legal name of your entity” and to say in what jurisdiction the entity was formed were formed.” The response from was evasive. Counsel then asserted “Per GOOGLE search your [telephone] number is associated with a scammer.”

This contact responded “Company name is not important to us. But we will keep it same if you keep on wasting our time. Make an offer and lets close deal.”

In a subsequent email to Complainant’s counsel, “highervisibility llc Management” stated: “Please note that we are making \$30k per month. We can only do this if you offer some amount so we can change our business name otherwise we are making enough money to face you in court. As per law, if you want to settle this dispute then you have to make us an offer and then we can give you our final stance.”

On February 25, 2025, after the Center notified Respondent of its default, the Center received an email from the Respondent, as follows:

“Please note that We own domain and our business is also registered under same domain name. If you want to get the same domain then you can request us but not to threaten us. We reserve the right to provide all evidences in our favor as we own domain name.

If you are looking to get domain highervisibilityllc.com then our first offer is \$10k to be paid to us so we can transfer domain to complaint.

You are welcome to make counter offer.”

There is no record evidence that Complainant responded to either of Respondent’s invitations to negotiate a purchase of the Disputed Domain Name.

## **5. Parties’ Contentions**

### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, Complainant contends that Respondent’s awareness of Complainant’s rights, and bad faith, may be based on constructive notice under United States law.

### **B. Respondent**

Respondent did not formally respond to the Complaint. However, as referenced above, the Respondent

submitted an informal communication two days after the due date for Response. As the communication is brief and its consideration would not delay the proceeding, the Panel will take it into consideration in the findings below.

## **6. Discussion and Findings**

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the Disputed Domain Name. Although the Disputed Domain Name also includes "llc," the Mark is still recognizable within the Disputed Domain Name. Although the addition of "llc" may bear on assessment of the second and third elements, the Panel finds that this addition does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.8.

Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

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

Because Complainant has not satisfied the third element of the Policy, the Panel will not discuss the second element.

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

The Panel finds that Complainant has not proved, based on the balance of probabilities, that Respondent registered the Disputed Domain Name in bad faith. Surprisingly, Complainant offers no evidence about its actual use of the Mark. Complainant does not offer a screenshot of its current website. Complainant does not allege or offer evidence that it is well known. The only evidence of Complainant's use of the Mark is a screenshot of an Internet Archive copy of Complainant's website in scrolled in 2004, but even this obsolete evidence fails to show how Complainant used the Mark as this displayed page shows only standard tabs without content on the page. Complainant does not offer any evidence to describe or quantify Complainant's use of the Mark or otherwise support an inference that Respondent probably knew of Complainant when he registered the Disputed Domain Name.

Instead, Complainant relies entirely on the contention that Respondent had constructive knowledge of Complainant's rights. Complainant alleges that "Complainant's federal trademark rights to HIGHERVISIBILITY within the United States begin in March of 2021, well before Respondent registered the domains in March of 2023. Respondent had actual or constructive notice of Complainant and Complainant's trademark rights and, on information and belief, intentionally registered the domain name <highervisibilityllc.com> and <hvlc.online> to create confusion." As explained above, there is no support for the allegation of actual knowledge.

Reliance on constructive knowledge "is a concept that now rarely finds favour in decisions under the Policy." *Latham & Watkins LLP v. ren yu*, WIPO Case No. [D2023-3880](#). "The concept of constructive notice, a legal

incident to having a registered trademark under United States trademark law, may support an infringement action in a court of law under certain circumstances, but it is no substitute for actual notice, which is what is generally considered under the UDRP's 'bad faith' concept. It is axiomatic under the UDRP that a complainant must show, on a balance of probabilities, that the respondent more likely than not had the complainant's trademark in mind when registering the subject domain name." *Christus Health v. Admin Support, Neural Media, Inc.*, WIPO Case No. [D2023-4981](#). "Given that the UDRP is supra-national law [...] under Rule 15(a), the Panel has the option, but not the obligation, to consider constructive notice." *Mi Cocina, Ltd. v. Melinda Garcia*, WIPO Case No. [D2023-4014](#).

Furthermore, Complainant offered no evidence about its own commercial activity so constructive notice is not enough to satisfy its burden under the Policy.

The consequence in any given case of assuming constructive notice "may depend in part on the complainant's reputation and the strength or distinctiveness of its mark, or facts that corroborate an awareness of the complainant's mark." [WIPO Overview 3.0](#), section 3.2.2. Where there is no corroborating evidence of cybersquatting or targeting constructive notice may not be sufficient to sustain Complainant's burdens of proof. *FN Funding Inc. v. Nick Mofford, 80 Eighty*, WIPO Case No. [D2023-3537](#). See also *Mi Cocina, Ltd. v. Melinda Garcia*, supra.

Complainant has not proved, based on the balance of probabilities, that Respondent targeted Complainant when he registered the Disputed Domain Name. There is no evidence that the Disputed Webpages impersonates Complainant's website. There is no allegation or evidence that the layout, color scheme, or graphics displayed on the Disputed Webpage copies or imitates Complainant's website. Compare, e.g., *Frankie Shop LLC v. Ralph Moran*, WIPO Case No. [D2025-0126](#) (Respondent copied photographs of Complainant's products); *Energy Transfer, ET C&D Holdco LLC f/k/a SemGroup Corporation v. Andrey Sokolov, Productions and Storage*, WIPO Case No. [D2024-5043](#) (Respondent copied text that Complainant created to describe its services). Respondent adds the term "Solution" to its tradename as it appears on the Disputed Webpage, thus "Higher Visibility Solution." Respondent displays a logo that is different from any design element that Complainant has introduced into evidence. Although some of the services offered by Respondent overlap those described in Complainant's trademark registrations, Respondent also offers services that are different from those offered by Complainant.

These differences may not avoid a finding of infringement under the Lanham Act in a United States court, but they are sufficient to raise doubts about whether Respondent was engaged in cybersquatting and intentionally targeting Complainant. It is at least as likely that Respondent adopted the Disputed Domain Name without knowledge of Complainant.

Moreover, Complainant apparently concedes that Respondent in fact offers the services described on the Disputed Webpages as there is no allegation or evidence that Respondent's offer of services is false or pretextual. On the contrary, Complainant alleges that Respondent uses the Disputed Domain Name "to provide the same or similar services in the same channel of trade [...]" This is a critical distinction that distinguishes cybersquatting from ordinary trademark infringement.

Although Complainant's Mark could be considered suggestive on the spectrum of distinctiveness, it nonetheless has obvious descriptive connotations. Complainant offers services intended to increase the visibility of its client's websites on the Internet. Respondent purports to offer similar services on the Disputed Webpages. It is not implausible that Respondent selected the Disputed Domain Name based on its descriptive connotations. This is not to deny Complainant's right to protect the Mark against infringement in court, but the descriptive connotations of the Mark weigh against a finding of bad faith when balancing the probabilities under the Policy.

Complainant does not mention, but the Panel notices, that Respondent included "llc" in the Disputed Domain Name even though there is no evidence that Respondent has created or employs a limited liability structure. Furthermore, when Complainant's counsel asked Respondent to describe its legal entity, Respondent's response was evasive. These facts favor Complainant, but, given the ubiquity of the "llc" designation the

addition of "llc" to the Disputed Domain Name is not enough to change the overall balance of probabilities with respect to bad faith.

Complainant alleges that Respondent stated that "Respondent refused to cease use of Complainant's mark and to transfer the domain name, <highervisibilityllc.com>, without an offer from Complainant that took into account Respondent's alleged revenues from use of the domain and infringing mark." If one assumes that Respondent was making a false statement when he said "we are making \$30K per month," then Respondent's request for a commensurate offer would be evidence of bad faith. Policy paragraph 4(b)(i). But Complainant does not allege, much less prove, that Respondent's business is somehow fake or fraudulent, or that Respondent's "\$30K per month" revenue claim was false. The Panel has no obligation to accept facially false or incredible claims by a respondent, but without some effort by Complainant to challenge Respondent's revenue claims, the Panel has no basis to find that Respondent's statement is false, and, consequently, no basis to find fault with Respondent's request for compensation that reflects the revenue that Respondent derived from the Disputed Domain Name. As the [WIPO Overview 3.0](#) observes: "Offers to sell: Taking the above scenarios into account, panels have generally found that where a registrant has an independent right to or legitimate interest in a domain name, an offer to sell that domain name would not be evidence of bad faith for purposes of the UDRP, irrespective of which party solicits the prospective sale." [WIPO Overview 3.0](#), section 3.1.1.

The Panel does not intend by these findings to confirm or deny that Respondent acted in good faith. Complainant failed here because it did not offer sufficient allegations and evidence to prove bad faith registration. Complainant appears to have assumed that it was sufficient to allege the bare bones of a trademark infringement action without attention to the need to prove bad faith registration of the Disputed Domain Name.

In short, this is a failure of pleadings and proof. The Panel suspects that Complainant might have been able to find evidence that its Mark had high visibility, and that Respondent was probably aware of its rights, but did not provide sufficient evidence of this. It is not sufficient to merely point to a federal trademark registration and allege bad faith.

The Panel finds the third element of the Policy has not been established.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Lawrence K. Nodine/*

**Lawrence K. Nodine**

Sole Panelist

Date: March 11, 2025