

ADMINISTRATIVE PANEL DECISION

Marathon Digital Holdings, Inc. v. Privacy Services Provided by Withheld for Privacy ehf / Mara Thon
Case No. D2022-0887

1. The Parties

Complainant is Marathon Digital Holdings, Inc., United States of America (“United States of America”), represented by Goodhue, Coleman & Owens, P.C., United States.

Respondent is Privacy Services Provided by Withheld for Privacy ehf, Iceland / Mara Thon, United States of America.

2. The Domain Name and Registrar

The disputed domain name <marathondigitalholding.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2022. On March 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 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 Complainant on March 17, 2022, 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 March 21, 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 Respondent of the Complaint, and the proceedings commenced on March 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 17, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 19, 2022.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on May 9, 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

Complainant, Marathon Digital Holdings, Inc., is a digital asset technology company engaged in mining cryptocurrencies, with a focus on the blockchain ecosystem and the generation of digital assets. Complainant was founded in 2010 under the name Verve Ventures, Inc. and changed its name to Marathon Patent Group in October 2012. Marathon Digital Holdings was formed on February 12, 2021, as a subsidiary of the Marathon Patent Group, and on February 27, 2021, was merged into Marathon Patent Group which then changed its name to Marathon Digital Holdings.

Complainant owns an International registration for the MARATHON DIGITALS HOLDINGS mark (Registration No. 1,611,535) which includes designations for Canada, China, the European Union, Japan, and the United Kingdom. This International Registration was filed on July 1, 2021 and registration was secured by Complainant for the MARATHON DIGITAL HOLDINGS mark in the European Union and the United Kingdom in January 2022. The other designations are still pending. Complainant also owns pending applications for the mark MARATHON DIGITAL HOLDINGS in the United States, both as a word and logo mark (Application Nos. 90466678 and 9046616). Those applications were filed on an intent-to use basis on January 14, 2021. On November 18, 2021, Complainant filed amendments to allege use of those marks in which Complainant claimed first use of the marks in January 2021. Complainant's amendments to allege use were accepted by the United States Patent and Trademark Office ("USPTO").

Complainant owns and uses the domain name <marathondh.com> to provide information concerning Complainant and its services. Complainant also uses the domain name <marapool.com> for a website offering bitcoin mining pool services.

Respondent, Mara Thon, registered the disputed domain name on November 4, 2021. Shortly thereafter, Respondent used the disputed domain name in conjunction with a website that promoted cryptocurrency cloud mining services along with the ability to purchase various cloud mining plans.

Complainant, through its representative, sent a demand letter to Respondent on January 6, 2022. Respondent apparently did not respond to that letter. Currently, however, there is no active website or page at the disputed domain name.

5. Parties' Contentions

A. Complainant

Complainant contends that it a publicly traded company in the United States that is well known in the cryptocurrency industry for its mining of cryptocurrencies and related services. Complainant asserts that it owns rights in the marks MARATHON DIGITAL HOLDINGS and MARATHON by virtue of Complainant's use of the marks well before the disputed domain was registered, and through Complainant's applications and registrations for the MARATHON DIGITAL HOLDINGS mark.

Complainant maintains that the disputed domain name is practically identical to and confusingly similar to Complainant's MARATHON DIGITAL HOLDINGS mark as it merely differs from that mark by dropping the letter "s".

Complainant argues that Respondent does not have rights or legitimate interests in the disputed domain name as Respondent (i) is not known by the MARATHON DIGITAL HOLDINGS name and mark (ii) does not

own any registered trademarks or trade names corresponding to the disputed domain name, (iii) uses a fictitious address in Arizona, (iv) received no permission or authorization from Complainant to use the MARATHON DIGITAL HOLDINGS mark, (v) has used the disputed domain name with a website that essentially copies Complainant's website at "www.marathondh.com" and uses Complainant's trademarks and logo to promote its cryptocurrency cloud mining services, and (vi) has registered a disputed domain name that is simply a misspelling of Complainant's MARATHON DIGITAL HOLDINGS name and mark.

Lastly, Complainant asserts that Respondent has registered and used the disputed domain in bad faith, as Respondent likely was aware of Complainant's well-known mark given that Respondent not only copied the MARATHON DIGITAL HOLDINGS mark in the disputed domain name, but used Complainant's logo on its website. Respondent also asserts that Respondent has acted in bad faith by using the disputed domain name for commercial gain to attract web users to a website that is meant to suggest it is connected to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

Here, although Respondent has failed to respond to the Complaint, the default does not automatically result in a decision in favor of Complainant, nor is it an admission that Complainant's claims are true. The burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. A panel, however, may draw appropriate inferences from a respondent's default in light of the particular facts and circumstances of the case, such as regarding factual allegations that are not inherently implausible as being true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); see also *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

The Panel is satisfied that Complainant has provided sufficient evidence that at the time of the filing of this Complaint, Complainant had established some common law rights in the MARATHON DIGITAL HOLDINGS name and mark. Complainant has provided much evidence showing that it has made use of the name and mark MARATHON DIGITAL HOLDINGS in connection with its services since early 2021. Complainant has provided examples of its use of the mark on its websites, various social media platforms, and contracts with users of its services. Complainant has also provided copies of its pending trademark applications for the MARATHON DIGITAL HOLDINGS marks that were filed in early 2021, the amendments that Complainant filed with the USPTO to allege use of that mark since January 2021, and the two trademark registrations that issued in January 2022 for the MARATHON DIGITAL HOLDINGS mark in the European Union and the United Kingdom.

With Complainant's rights in the MARATHON DIGITAL HOLDINGS mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding

the generic Top-Level Domain “.com”) is identical or confusingly similar with Complainant’s mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

In the instant proceeding, the disputed domain name is confusingly similar to Complainant’s MARATHON DIGITAL HOLDINGS mark as it essentially replicates the mark in a singular form by dropping the letter “s” from “holdings”. The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant’s MARATHON DIGITAL HOLDINGS mark and in showing that the disputed domain name is confusingly similar to that trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Based on the evidence submitted in this proceeding, it appears that Respondent registered the disputed domain name for purposes of impersonating Complainant in furtherance of some scheme for Respondent’s profit. Complainant has provided evidence that Respondent registered the disputed domain name after Complainant had adopted and was using its MARATHON DIGITAL HOLDINGS name and mark for its cryptocurrency mining services, and then used the disputed domain name with a website offering cryptocurrency cloud mining services that shared many similarities with Complainant’s websites, including the use of a logo reminiscent of Complainant’s MARATHON DIGITAL HOLDINGS logo mark. Simply put, Respondent’s use of the disputed domain name to pass itself off as connected to Complainant appears deceitful and cannot constitute a legitimate interest or evidence a *bona fide* right or use.

Given that Complainant has established with sufficient evidence that it owns rights in the MARATHON DIGITAL HOLDINGS mark, and given Respondent’s above noted actions and failure to appear in this proceeding, the Panel concludes that Respondent does not have a right or legitimate interest in the disputed domain name and that none of the circumstances of paragraph 4(c) of the Policy are evident in this case.

C. Registered and Used in Bad Faith

Given Respondent’s actions as noted above, and its failure to appear in this proceeding or to respond to Complainant’s demand letter, it is easy to infer that Respondent’s registration and use of the disputed domain name has been done in bad faith. Given that Respondent registered the disputed domain name after Complainant began use of the MARATHON DIGITAL HOLDINGS mark for its cryptocurrency mining services and then used the disputed domain name to post a website offering cryptocurrency cloud mining services and attempting to appear related to Complainant, makes clear that Respondent opportunistically registered the disputed domain name for Respondent’s profit or in furtherance of some scheme at the expense of Complainant. It is also worth noting that Respondent appears to have used false contact information for the disputed domain name including a suspicious name, “Mara Thon,” and a nonexistent address in the state of Arizona, thereby further confirming that Respondent has more than likely acted in bad faith. The fact that there is currently no active website or page at the disputed domain name does not prevent a finding of bad faith.

Accordingly, the Panel finds that Complainant succeeds under this element of the Policy.

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 <marathondigitalholding.com> be transferred to Complainant.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: May 23, 2022