

ADMINISTRATIVE PANEL DECISION

AccuWeather, Inc. v. Marek Boháček, Ing. Marek Boháček
Case No. D2022-1086

1. The Parties

The Complainant is AccuWeather, Inc., United States of America (“U.S.”), represented by Markery Law LLC, U.S.

The Respondent is Marek Boháček, Ing. Marek Boháček, Slovakia.

2. The Domain Name and Registrar

The disputed domain name <accuweather.name> is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2022. On March 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 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 April 6, 2022 providing the contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 8, 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 April 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2022. The Respondent sent an informal communication on April 14, 2022.

On April 19, 2022, upon request from the Complainant, the proceedings were temporarily suspended for purposes of settlement discussions concerning the disputed domain name. The proceedings were reinstated on May 24, 2022, also upon request from the Complainant.

The response due date was reset at June 6, 2022. The Respondent did not submit a substantive response. Accordingly, the Center notified the Commencement of Panel Appointment Process on June 7, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on June 21, 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.

On June 27, 2022 the Panel issued the Procedural Order no. 1 in order to address the communications received from the Parties during these proceedings.

The Respondent sent informal email communications to the Center on June 27, 2022 and June 28, 2022.

4. Factual Background

The Complainant is providing worldwide weather forecasting and related services, including but not limited to online weather forecasting, weather reporting and weather news and information. The Complainant began using the mark ACCUWEATHER around December 1971 and has provided weather forecasting news and information online since early 1998.

The Complainant owns numerous trademark registrations for ACCUWEATHER such as the following:

- the International Trademark Registration No. 0946129, for the word ACCUWEATHER, registered on November 5, 2007 for services in International Class ("IC") 42; and
- the U.S. Trademark Registration No. 1376417, for the word ACCUWEATHER, filed on February 22, 1985 and registered on December 17, 1985 for services in IC 42.

The Complainant owns and is using the domain name "www.accuweather.com" registered on October 27, 1995.

The disputed domain name was registered on April 30, 2014 and, at the time of filing the Complaint, it resolved to a website providing weather forecasting information.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name incorporates and is confusingly similar to the trademark ACCUWEATHER, the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith knowing the Complainant's trademark and business. The Complainant requests the transfer of the disputed domain name to it.

B. Respondent

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

On April 14, 2022 the Center received an email communication from the Respondent asking what would be the solution to end the dispute: to cancel or to transfer the disputed domain name to the Complainant.

Further, on June 27 and on June 28, 2022, following the reinstatement of the proceedings after the suspension, the Respondent send two communications to the Center, both saying that the disputed domain name expired on April 30, 2023 (sic) and that the Respondent does not want the disputed domain name anymore.

6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

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

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the ACCUWEATHER trademark.

The disputed domain name incorporates the Complainant's trademark in its entirety.

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".info", ".name") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Given the above, the Panel finds that the disputed domain name is identical to the Complainant's trademark ACCUWEATHER, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license, or authorization whatsoever to use the mark ACCUWEATHER, that the Respondent is not commonly known by the disputed domain name and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services.

Under the Policy, "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". See section 2.1 of the [WIPO Overview 3.0](#).

There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain name or that the Respondent made a *bona fide* offering of goods or services or a legitimate noncommercial use under the disputed domain name.

The Respondent has not substantially replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case.

Although, in its informal communications sent to the Center, the Respondent claims that he is willing to

cancel or transfer the disputed domain name to the Complainant, he did not further comply with these statements during the suspension period and choose to ignore the Complainant's communications.

Also, according to the records before it, the Respondent has used the disputed domain name in connection with a page providing services similar to those offered by the Complainant.

Furthermore, and without prejudice to the above, the nature of the disputed domain name, comprising the Complainant's trademark in its entirety, carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds trademark rights in ACCUWEATHER since 1971 and domain name registration since 1995.

The disputed domain name was registered in 2014 and reproduces exactly the Complainant's distinctive trademark.

From the above and the available record, the Panel finds that the disputed domain name was registered by the Respondent in bad faith, with knowledge of the Complainant and targeting its trademark.

At the time of filing the Complaint, the disputed domain name resolved to a page providing services similar to those of the Complainant.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

The Respondent was using without permission the Complainant's trademark in order to get traffic on its web portal and thus to create the false impression of a potential affiliation or connection with the Complainant.

Further on, the informal communications sent by the Respondent to the Center may be considered as acknowledgements of the fact that he is aware that he is not entitled to hold a domain name comprising a third party's trademark. However, the Respondent failed to comply with his own statements that he is willing to transfer the disputed domain name to the Complainant as, when he had the chance to conclude such transfer during the suspension period, he choose to ignore the Complainant's communications. Having in view the other circumstances of this case, such facts constitute further evidence of bad faith.

The disputed domain name is identical to the Complainant's trademark. Previous UDRP panels have found that the mere registration of a domain name that is identical to a third party's well-known trademark can, by itself, constitute a presumption of bad faith for the purpose of the Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <accuweather.name> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: July 5, 2022