

ADMINISTRATIVE PANEL DECISION

Arm Limited v. Privacy Service Provided by Withheld for Privacy ehf / Xishu Wang

Case No. D2022-1146

1. The Parties

The Complainant is Arm Limited, United Kingdom, represented by Quinn IP Law, United States of America (“United States”).

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Xishu Wang, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 1, 2022. On April 4, 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 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 April 12, 2022. The Respondent sent an email message to the Center on April 18, 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 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the parties that it would proceed to panel appointment on May 10, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on May 28, 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.

The Panel issued the Administrative Panel Procedural Order No. 1 ("PO No. 1") on June 28, 2022, inviting the Complainant to produce the Annex VII to the Amended Complaint which allegedly would show that the Respondent ought to be well aware of the Complainant in view of him being employed by a similar technology or computer based industry as the Complainant, also inviting the Respondent to comment on the Complainant's submission and on information disclosed by the Panel on Internet searches.

4. Factual Background

The Complainant is a provider of technology related goods and services since 1990, designing electronic products, including computer processors, graphics processors, digital memories and peripheral hardware and supplies software, development tools for computer hardware as well as providing software and consultancy services.

Among the Complainant's products is the "Arm Neoverse" series of processors which was first introduced in October 2018, including the Neoverse V-Series, Neoverse N-Series, and Neoverse E-Series Central Processing Units ("CPUs") (Annex IV to the Complaint).

The Complainant is the owner of several trademark registrations for the NEOVERSE trademark in various jurisdictions amongst which the United States trademark registration No. 5,915,615, registered on November 19, 2019, claiming first use in commerce on December 31, 2108, in classes 09 and 42 (Annex 5 to the Complaint).

The disputed domain name <neoverse.tech> was registered on June 15, 2021. Presently, no active webpage resolves from the disputed domain name. The Respondent has been a software engineer at Snap, Inc. since October 2019 (LinkedIn webpage of the Respondent).

5. Parties' Contentions

A. Complainant

The Complainant claims to have sold over 200 billion products, having its products and services reached over 70 percent of the world's population (Annex IV to the Complaint) and the NEOVERSE trademark become a brand of global recognition and achieved significant recognition in the marketplace in connection with the Complainant's goods and services since before the Respondent registered the disputed domain name.

According to the Complainant, its processors marketed under the NEOVERSE trademark are used as the main CPU for most mobile telephones, including those manufactured by Apple, HTC, Nokia, Sony Ericsson, and Samsung, in addition to providing the CPUs for many other, widely used, devices including laptops, tablets, televisions, and other electronic products.

Under the Complainant's view, the disputed domain name incorporates its NEOVERSE trademark entirely being the ".tech" extension related to the Complainant's activities.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

- (i) there has been no *bona fide* use of the disputed domain name by the Respondent;
- (ii) the Respondent is not known by the disputed domain name, not having any trademark registrations for "Neoverse"; and
- (iii) the Respondent is not affiliated with or licensed by the Complainant.

As to the registration and use of the disputed domain name in bad faith, the Complainant asserts that:

- (i) the Respondent knew, or should have known, at the time of registration of the <neoverse.tech> disputed domain name, of the Complainant's well-known status as a global innovator in the computer and electronics industries, the Complainant's rights in the NEOVERSE trademark and the Complainant's frequent use of and association with the term "Neoverse" with the Complainant's goods and services;
- (ii) given the fame and distinctiveness of the Complainant's trademark, the Respondent was not able to ignore it when registering the disputed domain name and thus it being obvious that the disputed domain name creates a likelihood of confusion with the Complainant's trademark. In addition to that, the disputed domain name could be used in connection with a potential phishing or pharming attack contexts;
- (iii) given that the Respondent has been employed by the computer software and application company Snap, Inc. that is in a similar technology or computer based industry as the Complainant and would be well aware of the Complainant, the Complainant's ARM trademark as well as the Complainant's goods and services, the Respondent could not not have known of the Complainant; and
- (iv) the Respondent's choice to retain a privacy protection service is a further indicative of the Respondent's bad faith as well as the lack of reply to a demand letter sent by the Complainant to the Registrar dated March 17, 2022 (Annex VIII to the Complaint).

In reply to PO No. 1, the Complainant submitted on July 3, 2022, a brief support as well as two further Annexes (LinkedIn webpage on the Respondent and the Respondent's employment and evidence of the business relationship between the Complainant and the Respondent's employer).

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. On his April 18, 2022, informal message to the Center the Respondent states that:

- a. he is a professional software engineer since 2010, having registered the disputed domain name for personal usage as the "metaverse" concept went popular in 2021;
- b. he has not yet had the chance to build his website and the disputed domain name has never been used;
- c. as a professional software engineer, he has never been involved in any domain name buy/sell for-profit activity;
- d. the "bad faith" claim is false since he had never heard of the Complainant's product or trademark;
- e. the Complainant is a very specialized computer hardware provider intended for usage in cloud infrastructure, selling to businesses directly, not being commonly known to ordinary consumers;
- f. even to him, who works in a pure software company that does not own any cloud infrastructure, he had no idea that the Complainant's product existed prior to this Complaint;
- g. there is no confusion given that the Complainant should not be entitled to any and all domain names incorporating the "Neoverse" expression, as long as the owner does not have bad intentions, like him; and
- h. he has no intention to use the disputed domain name nor has used it to harm or profit from the Complainant's trademark.

In reply to PO No. 1, the Respondent submitted a brief response on July 4, 2022, stating that Snapchat employs around 5,661 employees, never having, to the best of his knowledge, used the Complainant's technology as its cloud technology to that date what would make the claim that he would be aware of the Complainant and its trademark wrong.

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

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

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

The Complainant has established rights in the NEOVERSE trademark.

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

Therefore, the Panel finds that the disputed domain name is identical to the Complainant's trademark. The first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has made a *prima facie* case against the Respondent given, *inter alia*, that the Respondent has not been commonly known by the disputed domain name, and that the Respondent is not affiliated with or licensed by the Complainant.

As seen above, in his informal message to the Center the Respondent asserts that he registered the disputed domain name for personal usage as the "metaverse" concept went popular in 2021 but he has not yet had the chance to build his website and the disputed domain name has never been used.

The Respondent has not however submitted any evidence showing which use is intended for the disputed domain name other than merely stating that the disputed domain name would be used for "personal" use. Claimed examples of use or demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services cannot be merely self-serving but should be inherently credible and supported by relevant pre-complaint evidence. [WIPO Overview 3.0](#), section 2.2.

Considering the absence of any evidence in that sense and not holding Respondent any rights in a term corresponding to the disputed domain name, or any possible link between the Respondent and the disputed domain name, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

The second element of the Policy has therefore been established.

C. Registered and Used in Bad Faith

The Panel is not satisfied with the Respondent's simple rebuttal of not targeting the Complainant when registering the disputed domain name given his technical background and the fact that the Complainant and the Respondent's employer, at a time when the Respondent was already employed at Snap Inc., were in business transactions.¹

In addition to that, while noting that the disputed domain name is currently inactive the Panel concludes, given that the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name, that the passive holding of the inherently misleading disputed domain name by the Respondent amounts to the Respondent acting in bad faith.

Past UDRP panels have already dealt with the question of whether the "passive holding" of a domain name could constitute bad faith. Section 3.3 of the already quoted [WIPO Overview 3.0](#) states that "[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding. While UDRP panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and (iv) the implausibility of any good faith use to which the domain name may be put". In the circumstances of this case, the Panel finds that the "passive holding" of the disputed domain name does not prevent a finding of bad faith.

Another factor further reinforces the indication of the Respondent's bad faith in the broader context of this case, namely the Respondent's choice to retain a privacy protection service to conceal its identity.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

¹ <https://www.arm.com/company/news/2020/12/neoverse-expands-further-into-cloud-with-new-network-optimized-instances-at-aws>. Accessed on June 28, 2022

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 <neoverse.tech> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: July 6, 2022