

ADMINISTRATIVE PANEL DECISION

Askia v. Contact Privacy Inc. Customer 7151571251 / Prasanna Gopinath
Case No. D2022-2557

1. The Parties

The Complainant is Askia, France, represented by Novagraaf France, France.

The Respondent is Contact Privacy Inc. Customer 7151571251, Canada / Prasanna Gopinath, United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 13, 2022. On July 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 13, 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 July 20, 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 July 20, 2022.

On July 20, 2022, the Respondent sent an email to the Center, inquiring about the nature of the proceeding. On July 20, 2022, the Center replied to the email, explaining the proceeding to the Respondent.

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”).

On July 21, 2022, the Respondent requested for the Response deadline to be extended. On July 22, the Center acknowledged the Respondent’s email. In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 25,

2022. In accordance with the Rules, paragraph 5, the due date for Response was August 14, 2022. Other than the above communications, the Respondent did not submit any Response. Accordingly, the Center commenced the panel appointment process on August 23, 2022.

On August 23, 2022, the Respondent sent an email to the Center, stating that it no longer wanted to keep the disputed domain name.

The Center appointed Nicholas Weston as the sole panelist in this matter on August 30, 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

The Complainant is a company incorporated in France in 1994 that operates a software business in the fields of market research, design surveys and data collection and analysis. The Complainant holds a French Trademark No. 4566060 registered for ASKIA SOFTWARE on July 9, 2019, in classes 9 and 42.

The Complainant owns the domain name <askia.com>, registered on March 7, 2000 where its main website is located.

The Disputed Domain Name was registered on January 6, 2021. The Disputed Domain Name resolves to a website impersonating the Complainant's website and offering for sale the same services in the fields of surveys and data collection as the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant cites its trademark registration for ASKIA SOFTWARE in France as *prima facie* evidence of ownership. Complainant says that the Disputed Domain Name reproduces the distinctive element of the trademark ASKIA SOFTWARE.

The Complainant submits that its rights in the ASKIA SOFTWARE trademark predate the Respondent's registration of the Disputed Domain Name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, that "the Respondent as an individual, business or other organization, has not been commonly known by the [Disputed] [D]omain [N]ame" and that "the Respondent is clearly imitating and impersonating the Complainant by reproducing his trademark, his commercial name and his domain name for services in the same specialty."

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and the Rules. It submits that "(t)he Respondent was obviously well aware of the Complainant's trademark and business when registering the disputed domain name" then used it to resolve to a confusingly similar website of its own, with content that appears to have been purloined from other websites, which it says is registration and use of the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

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

A. Identical or Confusingly Similar

The Panel notes that the Complainant has registered rights in the mark ASKIA SOFTWARE.

The Panel observes that the Disputed Domain Name comprises: (a) the word “get”; (b) followed by the term “askia”; (c) followed by the gTLD “.com”.

It is well established that the gTLD used as technical part of a domain name may be disregarded (see section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition “[WIPO Overview 3.0](#)”). The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: “getaskia”.

The Panel observes that the dominant feature of the mark ASKIA SOFTWARE is recognizable in the Disputed Domain Name. The addition of the word “get” does not prevent the dominant feature of the mark ASKIA SOFTWARE from being recognizable within the Disputed Domain Name. Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the mark ASKIA SOFTWARE for purposes of the Policy [WIPO Overview 3.0](#), sections 1.7 and 1.8). Furthermore, UDRP panels have also found that the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant. In this case, the Respondent’s use of the Disputed Domain Name to attract traffic to a website that plainly targets the Complainant supports a finding of confusingly similarity.

Moreover, the Panel finds that the Complainant has produced sufficient evidence to demonstrate that Complainant has unregistered trademark rights in the mark ASKIA for the purposes of the Policy. There are two main parts to this finding in this Panel’s view. First, the Complainant’s mark appears to have become a distinctive identifier which consumers associate with its goods and/or services having been used since 1994. While the Complaint includes no evidence of the extent of any advertising, sales or other indicia of secondary meaning that might have occurred or any evidence that it has been known in the trade or publicly as the source of any specific goods or services, the second point that tips the balance for the Complainant is the evidence that the Respondent has also used the Disputed Domain Name to attract traffic to its website which plainly targets the Complainant (see *NEOVIA, Hi-Nutrients International Ltd. v. WhoisGuard Protected, WhoisGuard, Inc. / Deniz Hus*, WIPO Case No. [D2019-0600](#) (“The Respondent did not provide arguments to the contrary; rather, in the Panel’s view, the Respondent cannot dispute that, given it deliberately targeted the source identifier in an apparent fraud attempt. Such targeting of the Complainants is sufficient to establish limited trademark rights in the HI-NUTRIENTS trademark for the purposes of the Policy”); *Greenspring Associates, Inc. v. Lisa Knowles, Victoria capital pty*, WIPO Case No. [D2019-0265](#) (“To that extent, Complainant has in fact used the domain name <gspring.com> as a source identifier for its services. One person who cannot dispute that fact is Respondent, who (as is discussed below) deliberately targeted that source identifier (<gspring.com>) to attempt to perpetrate a fraud via confusion.”)). It is also well-established that in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered confusingly similar to that mark for purposes of the UDRP (see [WIPO Overview 3.0](#), section 1.7). This Panel accepts that the addition of the word “get” does not preclude a finding of

confusing similarity to the Complainant's unregistered mark ASKIA (see, for example: *Lilly ICOS LLC v. The Counsel Group, LLC*, WIPO Case No. [D2005-0042](#); *SANOFI AVENTIS v. ProtectFly.com/RegisterFly.com*, WIPO Case No. [D2006-1272](#)).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1)

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it has not licensed, permitted or authorized the Respondent to use the Complainant's trademark or to sell its products and for those reasons, the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that "the Complainant has no connection or affiliation with the Respondent" and that "the Respondent has no rights on the words 'askia', 'get askia' or 'getaskia', or any related terms".

The composition of the Disputed Domain Name consists of the dominant feature of the Complainant's trademark and a term connoting some kind of affiliation with the Complainant's surveys and data collection business. In this Panel's view, the conduct indicates an awareness of the Complainant and its mark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests. The Respondent's use of the Disputed Domain Name to host an impersonating website offering the same services as those offered by the Complainant does not support a claim to rights or legitimate interests (see [WIPO Overview 3.0](#), sections 2.5.3 and 2.13.1).

This Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it is engaging in an illegitimate commercial use of the Disputed Domain Name by suggesting some association with the Complainant and misleading consumers who are seeking out the Complainant's products and/or services to opportunistically divert Internet traffic to its web page.

The Panel finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy that a complainant must also demonstrate is that the disputed domain name in question has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The evidence that the Respondent has registered and used the Disputed Domain Name in bad faith is overwhelming. This Panel finds that the Respondent has targeted the Complainant in its choice of domain name and finds that a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the Disputed Domain Name supports a finding of bad faith registration (see [WIPO Overview 3.0](#), section 3.2.1). In a further finding of bad faith registration, the Panel also finds that the Respondent is, or should have been, aware of the Complainant's reputation and trademark when registering the Disputed Domain Name (see [WIPO Overview 3.0](#), section 3.2.2).

On the issue of use, the uncontradicted evidence of record is that the Disputed Domain Name was used to resolve to a website offering for sale the same services as those offered by the Complainant. In line with prior UDRP panel decisions, the Panel finds that this misconduct is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the

Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4).

This Panel finds that the Respondent has taken the dominant feature of the Complainant's trademark ASKIA SOFTWARE and incorporated it in the Disputed Domain Name, along with the word "get", without the Complainant's consent or authorization for the very purpose of capitalizing on the reputation of the trademark by diverting Internet users for commercial gain to its website which falls into the meaning of bad faith under paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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, <getaskia.com>, be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: September 13, 2022