

ADMINISTRATIVE PANEL DECISION

Capsim Management Simulations, Inc. v. Privacy Service provided by
Withheld for Privacy ehf / Richard Kinyua
Case No. D2022-2837

1. The Parties

The Complainant is Capsim Management Simulations, Inc., United States of America (“United States”), represented by Tolpin & Partners, PC, United States.

The Respondent is Privacy Service provided by Withheld for Privacy ehf, Iceland / Richard Kinyua, Kenya.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2022. On August 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 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 August 4, 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 August 4, 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 August 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 5, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on September 12, 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

This Complainant is a developer of educational business simulation software products and services. It started its activities in 1995.

The Complainant is the owner of the following trademark registrations for CAPSIM (the “CAPSIM trademark”):

- the United States trademark CAPSIM with registration No. 2,841,606, registered on May 11, 2004, for goods and services in International Classes 9, 41, and 42; and
- the United States trademark CAPSIM with registration No. 5,562,510, registered on September 11, 2018, for services in International Classes 41 and 42.

The Complainant is also the owner of the domain name <capsim.com> registered on October 25, 1996, which resolves to the Complainant’s main website.

The disputed domain name was registered on June 12, 2021. It resolves to a website that offers instruction and assistance services related to the software products offered by the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical to the CAPSIM trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant notes that it has been using the CAPSIM name and trademark since 1995, and its domain name <capsim.com> since 1996, whereas the Respondent registered the disputed domain name only in 2021. The Complainant further states that it is not affiliated with the Respondent, and has not authorized or licensed the Respondent to use the CAPSIM name or trademark to sell any goods or services.

According to the Complainant, the Respondent registered the disputed domain name to trade on the reputation of the Complainant. The Complainant points out that the Respondent’s website at the disputed domain name offers services to either tutor purchasers in how to complete various steps in the Complainant’s educational business simulation software, or to take over the student’s role in the simulations for the student. According to the Complainant, the Respondent’s apparent business model demonstrates that it knew about the Complainant’s trademark and services and that it has structured its own business around a claimed expertise in understanding how to use the Complainant’s simulation software.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent attempts to divert consumers to its own website by misleading visitors that it is the Complainant or that it is connected with the Complainant. The Complainant points out that the design of the website at the disputed domain name mimics that of the Complainant’s own website, and the statements on it directly refer to the Complainant’s specific simulation software. The Complainant notes that some key elements of the Respondent’s website at the disputed domain name demonstrate an effort to mislead Internet users that the Complainant is the source of this website and of the information and services discussed on it, including the header of the Respondent’s webpage, which contains the word “CAPSIM” similarly to the Complainant’s website. The Complainant adds that the top section of the Complainant’s

website at “www.capsim.com” shows the logos of six universities and companies that are customers of the Complainant, and the Respondent’s website at the disputed domain name mimics this statement of alleged customers, using the logos of five of the same six entities, which makes it to appear that the Respondent and the Complainant are the same entity.

The Complainant further states that the Respondent’s attempt to appear to be the Complainant itself, or part of the Complainant, extends to references to the Complainant’s flagship product called Capstone – a business simulation software program which the Complainant has been offering since its early days. The Complainant’s own website refers to Capstone as “our staple business strategy simulation.” According to the Complainant, the Respondent’s website makes direct reference to the Complainant’s Capstone program in a prominent offer to provide “Capstone Simulation Help” and a reference to “Capstone and Simulations.” The Complainant maintains that the Respondent’s bad faith and likely fraudulent nature is further shown by the supposed “experts” which the Respondent claims will help users with their Capstone and other Capsim simulations. The website at the disputed domain name highlights three supposed experts and their qualifications: “Michelle Meng,” who claims “I have acquired my degree of Master of Professional Capstone from National University of Singapore;” “Karen Betty,” who claims “I have acquired my degree of Master of Capstone from Michigan University;” and “K Anderson,” who claims “I have done my PHD in Capstone from Toronto University. The Complainant notes that these claimed qualifications are nonsense, because Capstone is the name of a well-known software business management simulation produced by the Complainant and not an academic field of study, and there are no academic programs in which one can get a masters or doctorate degree “in” the Capstone software. According to the Complainant, given the false claimed qualifications, it is possible that the supposed experts are also fictitious.

The Complainant points out that the primary customers for its software simulations are universities and existing companies, which allow some of their students or employees to learn by using the software simulations. The Respondent however targets the students or employees who are ultimately using the simulations, and the Respondent’s offered “help” is doing the work in place of the student or employee. The Complainant concludes that the Respondent is offering students and employees a way to cheat by paying someone else to do the work for them. According to the Complainant, such business model shows the Respondent’s bad faith, and the Respondent makes it much worse by pretending it is the Complainant who is offering the cheating option.

B. Respondent

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

6. Discussion and Findings

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the 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.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name

holder) to retain registration and use of the disputed domain name [...].

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the CAPSIM trademark and has thus established its rights in this trademark for the purposes of the Policy.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain (“TLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.net” TLD of the disputed domain name.

The relevant part of the disputed domain name for purposes of the first element analysis is therefore the sequence “capsim”, which reproduces the CAPSIM trademark entirely without the addition of any other elements.

In view of the above, the Panel finds that the disputed domain name is identical to the CAPSIM trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not used it in connection with a *bona fide* offering of goods or services, is not commonly known by the disputed domain name, and has not been authorized by the Complainant to use the CAPSIM trademark or to register the disputed domain name. The Complainant points out that the Respondent operates a website at the disputed domain name that appears as belonging to the Complainant to confuse and attract Internet users and offer them services that are related to the software products marketed by the Complainant. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided any arguments for the existence of rights or legitimate interests in the disputed domain name or disputed the Complainant’s contentions or evidence.

The disputed domain name is identical to the CAPSIM trademark, and the evidence in the case file shows that it resolves to a website that offers services related to the software products developed and marketed by the Complainant. As submitted by the Complainant and not disputed by the Respondent, the Respondent’s website at the disputed domain name offers instruction services for the Complainant’s educational business simulation software and services to carry out simulations with this software in place of its user. The evidence also shows that the website at the disputed domain name contains design elements like those included on the Complainant’s own website such as the logos of universities and companies that are customers of the Complainant next to the text “Trusted by 300,000+ University Students”, and features the CAPSIM trademark. There is no disclaimer for the lack of relationship with the Complainant.

The above satisfies the Panel that the Respondent knew the Complainant and targeted it when registering and using the disputed domain name in an attempt to impersonate the Complainant and deceive Internet users that the website at the disputed domain name is operated by the Complainant or is affiliated to it and that the services offered on this website are provided by the Complainant or an entity affiliated to it, with the expectation to receive an income from the provision of these services. The Panel does not regard such conduct as legitimate or giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Furthermore, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

For the foregoing reasons, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

As discussed above in this decision, the disputed domain name is identical to the Complainant's CAPSIM trademark and is being used for a website that offers instruction services for the Complainant's software products or services to take over the role of the user of this software without disclosing the lack of relationship between the Parties. The design of the website contains elements that make appear as if the Complainant's clients are clients of the Respondent, such as the logos of these clients and the text “Trusted by 300,000+ University Students” and the copyright notice “Copyright © 2022 Capsim Simulation assignments help” that is similar to the copyright notice on the Complainant's website, which reads “Copyright © 2022 Capsim Management Simulations, Inc.”. This leads the Panel to the conclusion that the Respondent is aware of the Complainant, its products and trademark, and has targeted them with the registration and use of the disputed domain name for financial gain. It also appears that this targeting was done to unfairly capitalize on the Complainant's goodwill for commercial gain by attracting Internet users to the Respondent's website and misleading them that they are being offered services by the Complainant itself or by an entity affiliated to the Complainant.

This satisfies the Panel finds that the disputed domain name was registered and is being used in bad faith under paragraph 4(b)(iv) 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 <capsim.net> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: September 22, 2022