

ADMINISTRATIVE PANEL DECISION

Appen Limited v. Danyll Eastman
Case No. D2022-3372

1. The Parties

The Complainant is Appen Limited, Australia, represented by Greenberg Traurig, LLP, United States of America (“United States”).

The Respondent is Danyll Eastman, United States of America.

2. The Domain Name and Registrar

The disputed domain name <appenus.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 9, 2022. On September 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 13, 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 September 19, 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 September 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2022.

The Respondent sent several informal emails to the Center on September 13, 14 and 21, 2022.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on November 4, 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, an Australian company, provides or improves data used for the development of machine learning and artificial intelligence products. Founded in 1996, the Complainant uses crowdsourcing to collect and improve a wide variety of data types, including speech and natural language data, image and video data, text and alphanumeric data and relevance data to improve search and social media engines.

The Complainant uses and has used the APPEN trademark in connection with software and software-related services. The Complainant also owns and operates the domain name <appen.com> where the Complainant's official website is hosted.

The Complainant owns the APPEN trademark, which enjoys protection in many countries including in the United States, where the Respondent is located

The Complainant is, *inter alia*, the owner of:

International Trademark APPEN registration No. 1388287, registered on June 21, 2017;
Australian Trademark APPEN registration No. 1817144, registered on December 21, 2016;
Australian Trademark APPEN registration No. 1121408, registered on June 29, 2006;
United States Trademark APPEN registration No. 5538406, registered on August 14, 2018.

The disputed domain name was registered on March 9, 2022.

The disputed domain name currently redirects to the Complainant's official website, but at the time the Complaint was filed it was used for a website very similar to the Complainant's official website, and where the Complainant's APPEN trademark was also displayed.

5. Parties' Contentions

A. Complainant

The Complainant claims that:

- (a) the disputed domain name is confusingly similar to the Complainant's trademark;
- (b) the Respondent lacks any rights or legitimate interests in the disputed domain name; and
- (c) the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent sent four informal emails to the Center on September 13, 14 and 21, 2022.

6. Discussion and Findings

6.1 Respondent's Identity

The Panel notes that paragraph 1 of the Rules defines Respondent as “the holder of a domain-name registration against which a complaint is initiated”. In the present case, at the time the Complaint was filed, the holder of the disputed domain name, according to the Whois record, was using a privacy service. Upon registrar verification, the underlying registrant of the disputed domain name was identified as “Danyll Eastman”. The Panel retains however discretion to determine the respondent against which the case should proceed (see section 4.4.5 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

The issue as to who should be named as the Respondent in cases involving a beneficial holder or identity questions in the context of the agent/beneficial holder relationship has been discussed by previous panels (see, for example, *Skoda Auto a.s. v. GlobeHosting, Inc.*; *Bogdan Hasnes, Evox Protrade SRL*, WIPO Case No. [DRO2019-0017](#); *FIL Limited v. Fidelity Capital Trade / Christia Brown*, WIPO Case No. [D2019-2169](#); *Kpark S.A.S. v. Domain Administrator, Optional*, WIPO Case No. [D2018-1263](#); *Compagnie Générale des Etablissements Michelin v. WhoisGuard, Inc., WhoisGuard Protected / Shaminda Perera*, WIPO Case No. [D2019-1834](#)).

According to the Registrar, the registrant of the disputed domain name is Danyll Eastman. In his first two informal emails sent to the Center on September 13, 2022, the Respondent posed the following questions:

“What’s going on here? And who are you guys?” and “Do you guys realized [sic] what you’ve done? How would you get my personal information without letting me know? Why my address?”

Then, following the Complainant's requests to confirm if he was the registrant of the disputed domain name, the Respondent on September 14, 2022, in his first response, apparently confirmed he did register the disputed domain name.

In his last email of September 21, 2022, the Respondent, following the Center's communication informing the parties of the possibility of suspending the proceeding in order to settle the dispute, responded with the following questions: “What did [sic] you guys need now? Do you want the access to the domain?”

For all the above reasons the Panel, on the balance of probabilities, believes that the named Respondent is indeed the registrant of the disputed domain name and that he has control of it.

As a consequence, in this instance the Panel has decided to consider that Danyll Eastman is the Respondent.

6.2 Substantive Issues

(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.

A. Identical or Confusingly Similar

The Complainant has established rights in the APPEN trademark.

The disputed domain name consists of the APPEN trademark combined with the letters “US”. The addition of the letters “US” in the disputed domain name does not prevent a finding of confusing similarity 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 1.8: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent does not appear to be commonly known by the name "appen" or by any similar name. The Respondent has no connection to or affiliation with the Complainant and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademarks. The Respondent does not appear to make any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. In fact, the disputed domain name currently redirects to the Complainant's official website, whereas at the time the Complaint was filed it was used for a website very similar to the Complainant's official website, and where the Complainant's APPEN trademark was also displayed. The Respondent has not replied to the Complainant's contentions (made in the course of this proceeding) claiming any rights or legitimate interests in the disputed domain name.

Moreover, the fact that the disputed domain name consists of the Complainant's trademark along with the letters "us" (generally used to refer to the United States) carries with it a risk of implied affiliation, potentially conveying to unsuspecting Internet users the false belief that any website related thereto would be associated or endorsed with the Complainant's official services in the United States.

The Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel, based on the evidence presented, accepts, and agrees with the Complainant's contentions that the disputed domain name was registered and has been used in bad faith.

The disputed domain name was registered many years after the Complainant's trademark was registered.

The Respondent's knowledge of the APPEN mark is particularly obvious, given that the APPEN trademark was displayed on the website at the disputed domain name.

In addition, by displaying the Complainant's registered trademark on the Respondent's website, the Respondent misled consumers into believing that the Complainant or an affiliated dealer were the source of the website.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the APPEN trademark.

The bad faith registration and use of the disputed domain name is also affirmed by the fact that, in this proceeding, the Respondent has not denied any of the assertions of bad faith made by the Complainant, and particularly the assertion that the Respondent's website was used to steal personal information from consumers and/or prospective crowdsourcing workers, contractors or employees of Appen, or at best to defraud consumers.

Consequently, this Panel finds that the Respondent's use of the inherently misleading disputed domain name, *i.e.* to resolve to a website where unauthorized and apparently fake APPEN services were offered, amounts to bad faith use.

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has satisfied 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 <appenus.com> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: November 15, 2022