

ADMINISTRATIVE PANEL DECISION

Empower Annuity Insurance Company of America and Personal Capital Corporation v. obodo njb

Case No. D2022-3743

1. The Parties

Complainants are Empower Annuity Insurance Company of America and Personal Capital Corporation, both from the United States of America (“United States”), represented by Polsinelli PC, United States.

Respondent is obodo njb, Nigeria.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 6, 2022. On October 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 7, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainants on October 18, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainants to submit an amendment to the Complaint. Complainants filed an amended Complaint on October 20, 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 Respondent of the Complaint, and the proceedings commenced on October 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 16, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 28, 2022.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on December 6, 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

Complainants are Empower Annuity Insurance Company of America, a corporation organized and existing under the laws of the State of Colorado in the United States (“Empower”) and Personal Capital Corporation, a corporation organized and existing under the laws of the State of Delaware in the United States (“Personal Capital”).

Complainants’ business runs under the mark PERSONAL CAPITAL, and provides services of online financial advisement and personal wealth management, with offices in San Francisco, Denver, Dallas, Atlanta, and Redwood Shores.

Complainants own a wide portfolio of trademark registrations internationally containing the word mark PERSONAL CAPITAL, such as:

Registration No.	Trademark	Jurisdictions	International Classes	Date of Registration
4303631	PERSONAL CAPITAL	United States	9, 16, 35, 36, 42, 45	March 19, 2013

Complainants contend they are well-known around the world for the trademark PERSONAL CAPITAL, which they use to identify their online financial advisement and personal wealth management business.

The disputed domain name was registered on July 27, 2021 and resolves to a webpage which apparently presents a trading business under the name of “PERSONAL CAPITAL TRADES”.

5. Parties’ Contentions

A. Complainant

Complainants plead that the disputed domain name is confusingly similar to the registered trademark PERSONAL CAPITAL, since it fully incorporates Complainants’ trademark PERSONAL CAPITAL.

Complainants affirm that the disputed domain name uses the trademark PERSONAL CAPITAL in its entirety with the addition of the generic word “trades” – which would not avoid a confusingly similarity between the disputed domain name and Complainants’.

Therefore, according to Complainants, the disputed domain name is confusingly similar with Complainants’ trademark PERSONAL CAPITAL, fulfilling paragraph 4(a)(i) of the Policy and paragraphs 3(b)(viii) and 3(b)(ix)(1) of the Rules.

In addition, Complainants state that Respondent would not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainants’ trademark PERSONAL CAPITAL as a domain name nor is Respondent associated with neither of Complainants.

Complainants observe that Respondent would have registered the disputed domain name for the purpose of exploiting Complainants' rights and well-known reputation of their PERSONAL CAPITAL trademark, which would not constitute a *bona fide* offering of goods and services, nor represent a legitimate noncommercial or fair use of the disputed domain name.

This way, Complainants state that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(2) of the Rules have been fulfilled.

Finally, Complainants state that (i) Respondent was well aware of the existence of the trademark PERSONAL CAPITAL, and is intentionally diverting costumers into the website hosted by the disputed domain name through the confusion caused by the unauthorized use of the trademark PERSONAL CAPITAL on the Internet; and (ii) the website which purports from the disputed domain name promises to provide financial services, similar to Complainants' business – which led Complainants to the conclusion that Respondent tries to scam Internet users into believing Respondent purportedly provides Complainants' services.

Thus, according to Complainants, the requirements for the identification of a bad faith registration and use of the domain name have been fulfilled, pursuant to paragraph 4(b)(iv) of the Policy.

Accordingly, Complainants request transfer of the disputed domain name to Complainant Empower Annuity Insurance Company of America.

B. Respondent

Respondent did not reply to Complainants' contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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 burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the complaint.

A. Identical or Confusingly Similar

Complainants have duly proven that they own prior registered and unregistered rights for PERSONAL CAPITAL, and that the disputed domain name is constituted by the trademark PERSONAL CAPITAL in its entirety with the sole addition of the word "trades".

The addition of the word "trades" does not prevent a finding of confusing similarity with Complainants' trademark PERSONAL CAPITAL – since the well-known trademark PERSONAL CAPITAL is fully integrated, and recognizable, in the disputed domain name.

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainants' trademark PERSONAL CAPITAL, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") as follows: "[w]hile the overall burden of proof in UDRP proceedings is on the complainant, 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."

In this case, noting the facts and contentions listed above, the Panel finds that Complainants have made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainants' contentions, the Panel has considered Complainants' un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

It should be noted that Respondent's lack of response (in the broader context of the case), according to the above-mentioned guidelines from [WIPO Overview 3.0](#), suggests that Respondent has no rights or legitimate interests in the disputed domain name that it could put forward.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* that could demonstrate legitimate interests, since the evidence shows that the confusingly similar disputed domain name resolves to a website in that at minimum unfairly trades on the reputation of Complainant's mark to offer competing services, and moreover is likely involved in a fraudulent scheme, as discussed further below.

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that fully incorporates Complainants' well-known trademark PERSONAL CAPITAL, plus the addition of the word "trades", which has a close relation to the financial services provided by Complainants. The Panel finds that it was duly demonstrated that Respondent was aware of Complainants' rights to the trademark PERSONAL CAPITAL at the time of the registration – as Complainants enjoy a worldwide reputation with the use of the referred trademark.

In addition, the use of the disputed domain name in the present circumstances allows a finding of bad faith registration and use, since Respondent's website offers competing services under a name that wholly incorporates Complainant's trademark with a related, dictionary term in an apparent attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant.

Moreover, the evidence indicates that Respondent's website is not legitimate and that Respondent most likely uses the disputed domain to run a fraudulent investment scheme. In this regard, Complainant provides evidence that aspects of the website, such as portrait photographs featured in alleged reviews, have been scraped from third party websites and used in connection with fictitious names and testimonials in an attempt

to make Respondent's website appear legitimate. In addition, Complainant claims to have found at least one other domain name owned by Respondent that has been blacklisted as harmful by an Internet search engine, and contends that this shows Respondent is engaged in a pattern of bad faith.

Section 3.4 of the [WIPO Overview 3.0](#) establishes that "Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. [...] Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers."

The UDRP panel in *Twitter, Inc. v. Whois Agent, Whois Privacy Protection Service, Inc. / Domain Support*, WIPO Case No. [D2015-1488](#) came to a similar conclusion:

"The Panel notes that Respondent's use of the website at the Domain Name which incorporates Complainant's trademark in its entirety indicates that Respondent possibly registered the Domain Name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, as per paragraph 4(b)(iv) of the Policy. Furthermore, the Panel accepts Complainant's undisputed submission that bad faith registration and use of the Domain Name is further indicated by the fact that there is strong suspicion of Respondent using the Domain Name in an elaborate common phishing scam."

The Panel finds that the circumstances of the present case allows a finding of bad faith in the registration and use of the disputed domain name, considering that (i) Respondent tries to obtain commercial gain by using the trademark PERSONAL CAPITAL in its entirety, and supposedly offering financial services at the disputed domain name website – likely in connection to a fraudulent scam at the disputed domain; (ii) provision of false and/or misleading information on Respondent's website; and (iii) the trademark PERSONAL CAPITAL is well-known internationally, such that Respondent most likely knew (or should have known) of its existence, taking advantage of the confusion caused on the public by its use in the disputed domain name.

Moreover, the Panel finds it relevant that the Respondent has not provided any evidence of good faith registration or use, or otherwise participated in this dispute. The Complainant has put forward serious claims regarding the apparent fraudulent use of the disputed domain name that the Panel would expect any legitimate party would seek to refute.

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) of the Policy is satisfied.

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 <personalcapitaltrades.com> be transferred to Complainant Empower Annuity Insurance Company of America.

/Gabriel F. Leonardos/

Gabriel F. Leonardos

Sole Panelist

Date: December 20, 2022