

ADMINISTRATIVE PANEL DECISION

Advancer Technologies, LLC v. Hermansyah Hermansyah Case No. D2023-0009

1. The Parties

The Complainant is Advancer Technologies, LLC, United States of America (“United States”), represented by Carlson, Gaskey & Olds, P.C., United States.

The Respondent is Hermansyah Hermansyah, Cambodia.

2. The Domain Name and Registrar

The disputed domain name <advancertechnologies.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 2, 2023. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 4, 2023, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 2023, 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 January 5, 2023.

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 January 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 30, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on February 3, 2023. 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

Since at least 2015, the Complainant has supplied muscle sensor electric devices and circuit boards under the mark ADVANCER TECHNOLOGIES. The Complainant and its distributors have sold over 70,000 of the Complainant's products in some eleven countries.

The Complainant also operates a YouTube channel for product tutorials with over 6,000 subscribers and 2.5 million views.

The Complainant owns United States trade mark No. 5150214 for ADVANCER TECHNOLOGIES, filed on June 28, 2016, registered on February 28, 2017, in class 9.

The Complainant registered the disputed domain name on August 24, 2010, and used it for a website promoting its products, as well as providing documentation and support.

The Respondent acquired the disputed domain name at some point in October 2022, after the Complainant unintentionally failed to renew it. The Respondent used the disputed domain name for a gambling site.

As evidenced by the Complainant, the Respondent has acquired and resolved other expired domain names to similar gambling websites.

5. Parties' Contentions

A. Complainant

The following is a summary of the Complainant's contentions.

In addition to its registered trade mark, the Complainant owns common law rights in the mark ADVANCER TECHNOLOGIES arising from its supply of educational services via its YouTube channel.

The Complainant's trade mark is well-known.

The disputed domain name is identical to the Complainant's trade mark, which it incorporates in its entirety.

The Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent's use of the disputed domain name to lure visitors seeking the Complainant's business to the Respondent's gambling website does not constitute a legitimate interest in the disputed domain name.

Such activity by the Respondent also constitutes registration and use of the disputed domain name in bad faith.

The Respondent's history of similar behaviour in relation to other domain names is further evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established registered rights in the mark ADVANCER TECHNOLOGIES, as well as unregistered trade mark rights deriving from the Complainant's use of that mark.

Disregarding the Top-Level Domain ("TLD") suffix, which is excluded from the comparison, the disputed domain name is identical to the Complainant's trade mark. Accordingly, the Panel finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

As explained in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, for reasons explained in section 6C below, the Panel considers that the Respondent has used the disputed domain name to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's goods and/or services. Such use of the disputed domain name could not be said to be *bona fide*.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel considers that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

First, the disputed domain name carries a high risk of implied affiliation as it is identical to the Complainant's trade mark – see section 2.5.1 of the [WIPO Overview 3.0](#).

Second, the disputed domain name was likely to continue to attract users seeking the Complainant given its previous use by the Complainant.

Third, the Respondent has engaged in a similar pattern of conduct, as discussed in section 4 above.

It is reasonable to infer that, in diverting users to a gambling website, the Respondent's intent was on commercial gain.

The likelihood of confusion is not diminished by the probability that users arriving at the Respondent's site will realise that the site is no longer connected with the Complainant. Paragraph 4(b)(iv) of the Policy is concerned with the intentional attracting of Internet users. Here, the disputed domain name creates an implied risk of affiliation with the Complainant, and the Respondent profits from at least some of the traffic intended for the Complainant.

Furthermore, the Respondent has not come forward to deny the Complainant's assertions of bad faith. It is difficult to conceive of any legitimate reason why the Respondent would wish to register the disputed domain name and use it to host a gambling website (lacking any apparent connection between the composition of the disputed domain name and its use), and the Respondent has offered no explanation. In these circumstances, the Panel considers reasonable to conclude that, in the absence of an alternative explanation, the Respondent was probably attempting to take an unfair advantage by profiting from traffic generated by the Complainant's previous use of the disputed domain name.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) 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 names, <advancertechnologies.com>, be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: February 17, 2023