

ADMINISTRATIVE PANEL DECISION

Heritage Title Co. of Austin, Inc. v. Judy Dalba
Case No. D2023-0408

1. The Parties

Complainant is Heritage Title Co. of Austin, Inc., United States of America (“United States” or “U.S.”), represented by Jackson Walker, LLP, United States.

Respondent is Judy Dalba, United States.

2. The Domain Name and Registrar

The disputed domain name <heritage-title.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 30, 2023. On January 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 Complainant on January 31, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 1, 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 Respondent of the Complaint, and the proceedings commenced on February 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 23, 2023.

The Center appointed John C McElwaine as the sole panelist in this matter on March 2, 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

Complainant is a title company based in Austin, Texas offering title insurance and escrow services to both commercial and residential real estate clients in all major markets in Texas.

On January 26, 2023, the Domain Name was registered with the Registrar. The Domain Name resolves to a website displaying pay-per-click advertisements.

5. Parties' Contentions

A. Complainant

Complainant alleges as background information, that it has operated in Texas for the last 40 years as a premium title insurance and escrow services company. Complainant asserts that since its founding it has continuously used the trademark HERITAGE TITLE COMPANY (the "HERITAGE TITLE Mark") to identify Complainant to its customers and the public. Complainant further asserts that it owns and conducts its internet activities under the HERITAGE TITLE Mark through its domain name, <heritagetitleofaustin.com>. Complainant also points out that its employees conduct the company's business by using email addresses at the domain name, <heritage-title.com>.

Complainant alleges that it registered the <heritagetitleofaustin.com> on September 24, 2001, and has made extensive use of its HERITAGE TITLE Mark on the Internet via the content available on a website that resolves from this domain name. Complainant alleges that it began using its HERITAGE TITLE Mark long before Respondent's registration and use of the Domain Name. Based upon Complainant's alleged extensive use of the HERITAGE TITLE Mark, Complainant asserts that it has acquired extensive consumer recognition and invaluable goodwill throughout the state of Texas.

Complainant alleges that it conducts escrow services to facilitate its commercial and residential clients' real estate transactions using email addresses on the <heritage-title.com> domain name. Complainant further explains that due to the nature of escrow services, businesses like Complainant's are often the targets of internet scams and that bad actors are known to misuse the names of escrow services to send individuals fake wiring instructions.

Complainant provided evidence in the form of MX record relating to the Domain Name. Complainant further points out that a "MX record" is the acronym for "mail exchange record" and that if a mail exchange exists, then it appears in the DNS records associated with that domain name. Complainant alleges that the Domain Name is only distinguished from Complainant's email domain name, <heritage-title.com>, by the substitution of the letter "l" for the letter "i" in the words "heritage" and "title". Complainant also alleges that one of its clients received fraudulent emails from a "@heritage-tittle.com" email address. Complainant contends that the email purported to be from Complainant's Vice President in Residential Escrow by using the correct username but the fake "@heritage-tittle.com" email address. In addition, Complainant alleges that Respondent also added carbon copies to fraudulent email addresses using "@heritage-tittle.com" to impersonate additional employees of Complainant. Complainant also contends that the email indicates in its signature block that the sender is a representative of Complainant and lists the correct physical address and phone number for Complainant's actual location in Austin, Texas.

With respect to the first element of the Policy, Complainant contends that it owns common law trademark rights in the HERITAGE TITLE Mark. Complainant alleges that the Domain Name is nearly identical to

Complainant's HERITAGE TITLE Mark differing only by replacing the letter "i" with the letter "I".

With respect to the second element of the Policy, Complainant asserts that Respondent has no rights or legitimate interests in Domain Name because it is confusingly similar to Complainant's HERITAGE TITLE Mark and is being used to perpetrate fraudulent activities. Complainant also alleges that it has never consented to Respondent's use of the HERITAGE TITLE Mark in connection with the Domain Name, and there is no affiliation or connection between Complainant and Respondent. Complainant also points out that the Domain Name resolves to a parking website and that there is no *bona fide* offering of goods or services within the meaning of the Policy.

With respect to the third element of the Policy, Complainant realleges that at least one email associated with the Domain Name was sent where Respondent posed as Complainant and Complainant's employees to perpetuate a fraudulent scheme to illegally intercept wired escrow funds. Complainant further alleges that use of false contact details (*i.e.* Complainant's physical address and phone number) to pass itself off as Complainant is evidence that Respondent's use of the Domain Name is in bad faith. Lastly, Complainant contends that Respondent's use of a privacy service to register for the Domain Name is additional evidence of bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4(a) of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

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

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kasso Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules, and applicable principles of law, the Panel's findings on each of the above-cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant show that the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. In this matter, Complainant alleges to have unregistered or common law rights in the HERITAGE TITLE Mark. With respect to common law trademark rights, the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.3, states that "to establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services."

Here, Complainant has established use of the HERITAGE TITLE Mark and has made unchallenged assertions that such use has been continuous for the last 40 years. In addition, Complainant provided evidence that Respondent intentionally targeted Complainant by developing a sophisticated email scam using the Domain Name and content within the email message that referenced Complainant, such as its employees' names and an address of one of Complainant's business locations. See [WIPO Overview 3.0](#), section 1.3 ("The fact that a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier.") The Panel finds that Complainant has sufficiently established unregistered trademark rights in its HERITAGE TITLE Mark for purposes of the Policy. See also *Heritage Title Co. of Austin, Inc. v. Murphy Wayne*, WIPO Case No. [D2022-4724](#) (similar finding).

As discussed in the [WIPO Overview 3.0](#), section 1.9, the consensus view is that "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". Similarly, previous UDRP panels have consistently held that "a mere addition or a minor misspelling of Complainant's trademark does not create a new or different mark in which Respondent has legitimate rights". *Express Scripts, Inc. v. Whois Privacy Protection Service, Inc. / Domaindeals, Domain Administrator*, WIPO Case No. [D2008-1302](#) ("Such insignificant modifications to trademarks is commonly referred to as 'typosquatting' or 'typo-piracy,' as such conduct seeks to wrongfully take advantage of errors by users in typing domain names into their web browser's location bar.") The spelling errors used in typosquatting have been found to produce domain names that are confusingly similar to the marks which they mimic. See, e.g., *Yahoo! Inc. and GeoCities v. Data Art Corp. et al.*, WIPO Case No. [D2000-0587](#). Here, the Domain Name is virtually identical to Complainant's HERITAGE TITLE Mark differing only by the addition of the replacement of the letter "i" with the letter "I" in the words "heritage" and "title". Moreover, while the Complainant's HERITAGE TITLE Mark features the addition element COMPANY, the omission of such word from the Domain Name does not prevent confusing similarity, particularly as HERITAGE TITLE is the dominant element of the Complainant's trademark, which is also independently reflected without the use of "company" in the Complainant's email domain name <heritage-title.com>.

It is well established, and the Panel agrees, that typosquatting domain names are intended to be confusing and can constitute confusing similarity. See, *First American Financial Corporation v. VistaPrint Technologies Ltd*, WIPO Case No. [DCO2016-0008](#); *National Association of Professional Baseball Leagues, Inc, d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#)). Accordingly, the Panel finds that Complainant has met its burden of showing that the Domain Name is confusingly similar to the HERITAGE TITLE Mark in which Complainant has valid subsisting trademark rights.

B. Rights or Legitimate Interests

Under the Policy, paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant needs only make a *prima facie* showing on this element, at which point the burden of production shifts to Respondent to present evidence that it has rights or legitimate interests in the Domain Name. If Respondent has failed to do so, then Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which a respondent could demonstrate rights or legitimate interests in a contested domain name:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

With respect to Complainant’s contention that Respondent is not commonly known by the Domain Name, the Panel notes that the Whois information lists Respondent as “Judy Dalba” and the Panel therefore finds, based on the record and the lack of evidence otherwise, that Respondent is not commonly known by the Domain Name. See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#) (“the Panel notes that the Respondent’s name is “Bestinfo” and that it can therefore not be “commonly known by the Domain Name.”)

Complainant has further alleged that it has never licensed or otherwise provided authorization for Respondent to use the HERITAGE TITLE Mark and Respondent is not an agent of Complainant. Although Respondent has been properly notified of the Complaint by the Center, it has failed to submit any response on this point. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic.A.S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainants, it can be a further inference in appropriate circumstances that respondents have no rights nor legitimate interests in the domain name at issue. See *AREVA v. St. James Robyn Limoges*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#). The Panel finds that there is no evidence Respondent has never been licensed or otherwise authorized to use the HERITAGE TITLE Mark that would justify registration of the Domain Name and that Respondent is not an agent of Complainant.

Complainant asserts that Respondent is not making *bona fide* use of the Domain Name under paragraph 4(c), in part, as the Domain Name links to what appears to be a “parked” page” featuring pay-per-click advertisements for third-party services. However, no evidence of the website that was displayed at the Domain Name was provided with the Complaint. As such, these allegations are not taken into account by the Panel, given that the Panel can come to a determination based on the actual evidence that was provided in the Complaint and further described below.

Complainant did allege and provide, however, evidence that the Domain Name is being used for an email scam that involved use of the HERITAGE TITLE Mark in the email address and in the signature line of the email. The Panel finds that the purpose of registering the Domain Name was to engage in fraudulently email scheme, which is not a *bona fide* offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”); see also, *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name holding, “such phishing scam cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”). The undisputed evidence of impersonation, deception, and fraud nullifies any possible basis for the acquisition of rights or legitimate interests by Respondent. See *Afton Chemical Corporation v. Meche Kings*, WIPO Case No. [D2019-1082](#).

Accordingly, Complainant has made a *prima facie* showing of Respondent’s lack of rights or legitimate interests and Respondent has failed to come forward to rebut that showing. As provided by paragraph 14 of the Rules, the Panel may draw such inferences from Respondent’s default as it considers appropriate. Therefore, the Panel is entitled to accept that Complainant has established the second element of the Policy; Respondent has no rights or legitimate interests in respect of the Domain Name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. Paragraph 4(b) of the Policy sets out a non-exhaustive list of factors constituting bad faith registration. Complainant contends that Respondent's use of the Domain Name in connection with a scheme to defraud prospective job seekers for Respondent's commercial gain is acting in opposition to Complainant and disrupting Complainant's business under paragraph 4(b)(iii) of the Policy.

Bad faith registration can be found where respondents "knew or should have known" of complainant's trademark rights and nevertheless registered a domain name in which he had no rights or legitimate interests. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). Based on Complainant's submission, which was not rebutted, it is difficult to conceive that Respondent did not know of Complainant's HERITAGE TITLE Mark and its escrow and title services when Respondent registered the Domain Name particularly as Respondent sought to impersonate Complainant's employees and send at least one email claiming to be from "Vice President of Residential Escrow" and utilized the HERITAGE TITLE Mark and an address of one its location in the signature block. See *WhatsApp Inc. v. Francisco Costa*, WIPO Case No. [D2015-0909](#) (finding that "it is likely improbable that Respondent did not know about Complainant's WHATSAPP trademark at the time it registered the Disputed Domain Name considering the worldwide renown it has acquired amongst mobile applications, and the impressive number of users it has gathered since the launch of the WhatsApp services in 2009".) It is worth noting that the date of the alleged fraudulent email was January 26, 2023, which is the same day the Domain Name was registered.

Additionally, Respondent is using the Domain Name in bad faith by intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant's HERITAGE TITLE Mark as to affiliation with Respondent's website in violation of paragraph 4(b)(iv) of the Policy. The Domain Name incorporates a confusingly similar misspelling of Complainant's HERITAGE TITLE Mark, which would mislead Internet users into thinking that Respondent's or its emails were from or affiliated with Complainant. See *eBay Inc. v. Douglas Bennett*, WIPO Case No. [D2015-1178](#).

The use of a confusingly similar, deceptive domain name for an email scam has previously been found by panels to be sufficient to establish that a domain name has been registered and is being used in bad faith. See *Samsung Electronics Co., Ltd. v. Albert Daniel Carter*, WIPO Case No. [D2010-1367](#); *Securitas AB, supra*, WIPO Case No. [D2013-0117](#). Moreover, in finding a domain name used only for an email scam was bad faith, the panel in *Kramer Law Firm, P.A. Attorneys and Counselors at Law v. BOA Online, Mark Heuvel*, WIPO Case No. [D2016-0387](#), pointed out that numerous UDRP panels have found such impersonation to constitute bad faith, even if the relevant domain names are used only for email. See, e.g., *Terex Corporation v. Williams Sid, Partners Associate*, WIPO Case No. [D2014-1742](#) ("Respondent was using the disputed domain name in conjunction with...an email address for sending scam invitations of employment with Complainant"); and *Olayan Investments Company v. Anthono Maka, Alahaji, Koko, Direct investment future company, ofer bahar*, WIPO Case No. [D2011-0128](#) ("although the disputed domain names have not been used in connection with active web sites, they have been used in email addresses to send scam emails and to solicit a reply to an 'online location'"); see also, [WIPO Overview 3.0](#), section 3.1.4.

For this reason, the Panel holds that Complainant has met its burden of showing that Respondent registered and is using the Domain Name in bad faith.

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 Domain Name, <herltage-tittle.com>, be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: March 16, 2023