

ADMINISTRATIVE PANEL DECISION

CVS Pharmacy, Inc. v. Justin Chamber
Case No. D2023-3395

1. The Parties

Complainant is CVS Pharmacy, Inc., United States of America ("United States"), represented by the GigaLaw Firm, United States.

Respondent is Justin Chamber, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <cvshealthllc.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 August 8, 2023. On August 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 9, 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 (Redacted for Privacy / Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 17, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on August 17, 2023.

The Center verified that the Complaint together with the amendment to the 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 August 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 7, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on September 20, 2023.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on September 27, 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, CVS Pharmacy, Inc. (“CVS”) is an American health innovation company. Complainant claims to be well-known in the United States and other countries.

Complainant operates websites using the domain names <cv.com>, <cvsh.com> and <cvshpharmacy.com> in which promote and offers its goods and services.

Complainant owns a wide portfolio of trademark registrations in the United States and other countries for the marks CVS and CVS HEALTH. Some examples of Complainant’s trademark registrations can be found below:

Registration No.	Trademark	Jurisdictions	International Class	Registration Date
919941	CVS	United States	35	September 7, 1971
5055141	CVS HEALTH	United States	35, 36, 44	October 4, 2016
5402010	CVS HEALTH	United States	03, 05, 10, 21	February 13, 2018

The disputed domain name was registered on July 14, 2023, and currently resolves to an error webpage without content.

5. Parties’ Contentions

A. Complainant

Complainant pleads that the disputed domain name is confusingly similar to the registered trademark CVS HEALTH, since it fully incorporates Complainant’s trademark CVS HEALTH with the addition of the term “llc”. The only difference between the disputed domain name and Complainant’s trademark is the addition of the term “llc” in the disputed domain name, associated with the generic Top-Level Domain (“gTLD”) “.com”, which is not enough to distinguish from Complainant’s trademark, claiming to create a risk of association, fulfilling paragraph 4(a)(i) of the Policy and paragraph 3(b)(viii) and 3(b)(ix)(1) of the Rules.

In addition, Complainant states 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 Complainant’s trademark CVS HEALTH as a domain name nor is Respondent associated with Complainant.

Complainant observes that Respondent does not make a legitimate noncommercial or fair use of the disputed domain name, as it is not used to promote a *bona fide* offering of goods or services, nor to support a legitimate noncommercial or fair use.

This way, Complainant states 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, Complainant states that Respondent has established MX records for the disputed domain name, which enables it to use the disputed domain name to send and receive emails. Complainant alleges that the establishment of MX records for the disputed domain name indicates that the disputed domain name could be used for fraudulent email communications.

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

Accordingly, Complainant requests transfer of the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's 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

Complainant has duly proven that it owns prior registered rights for CVS HEALTH, and that the disputed domain name includes the trademark CVS HEALTH with the addition of the term "llc".

The addition of the term "llc" does not prevent a finding of confusing similarity with Complainant's trademark CVS HEALTH - since the trademark CVS HEALTH is recognizable in the disputed domain name.

The disputed domain name consists also of the gTLD ".com". The applicable gTLD in a domain name, such as ".com" in this case, is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test (see section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant's trademark CVS HEALTH, 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 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 Complainant has 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 Complainant’s contentions, the Panel has considered Complainant’s 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](#), section 2.1, 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* offering of goods or services that could demonstrate rights or legitimate interests, since the evidence shows that the disputed domain name resolves to a webpage without content.

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, shall be evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that fully incorporates Complainant’s trademark CVS HEALTH with the addition of the term “llc”, which is confusingly similar to Complainant’s trademark.

The Panel finds that it was duly demonstrated that Respondent was likely aware of Complainant’s rights to CVS HEALTH at the time of the registration, as Complainant’s trademark is widely known and enjoys an international reputation in the health innovation sector.

Further, evidence shows that the disputed domain name resolves to a website without content. Previous UDRP panels have concluded in similar cases that such non-use does not prevent a finding of bad faith use by the passive holding doctrine. See *BPCE v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / pascale kiss, cherhgi*, WIPO Case No. [D2021-1251](#).

As discussed in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), there are five circumstances that indicate if the passive holding of a domain name could be regarded as bad faith:

- “(i) the Complainant’s trademark has a strong reputation and is widely known [...],
- (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,
- (iii) the Respondent has taken active steps to conceal its identity [...],
- (iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and
- (v) taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate [...].”

Considering all of the items listed above, the Panel finds that at least items (i), (ii) and (v) are present in this case, since (i) Complainant enjoys a well-known reputation for the trademark CVS HEALTH; (ii) Respondent has not responded to Complainant’s contentions, failing to provide evidence of the use in good faith of the disputed domain name; and (v) there is no plausible use of the disputed domain name that would not represent bad faith, especially considering that it is composed of Complainant’s trademark CVS HEALTH.

Thus, the circumstances of the present case support a finding of bad faith.

Finally, it should be noted that, in the circumstances, Respondent's lack of response further reinforces that the disputed domain name most likely was registered and is being used in bad faith. In this sense, the panel found in *Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Alexis Kane*, WIPO Case No. [D2021-0912](#) that:

"The following factors were also considered by the Panel as indicative of bad faith registration and use of the disputed domain name: (i) the Respondent's lack of response to the Complaint. See, *Awesome Kids LLC and/or Awesome Kids L.L.C. v. Selavy Communications*, WIPO Case No. [D2001-0210](#); (ii) the Respondent's lack of response to the cease-and-desist letter sent by the Complainant. See, e.g., *Intesa Sanpaolo S.p.A. v. Ekkert Ida*, WIPO Case No. [D2018-2207](#); (iii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name as per paragraph 4(b) of the Policy."

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, <cvshealthllc.com> be transferred to Complainant.

Gabriel F. Leonardos

Gabriel F. Leonardos

Sole Panelist

Date: October 11, 2023