

ADMINISTRATIVE PANEL DECISION

H. Lee Moffitt Cancer Center & Research Institute Inc. v. Hirsch Dev
Case No. D2023-4252

1. The Parties

Complainant is H. Lee Moffitt Cancer Center & Research Institute Inc., United States of America (“United States”), represented by Meunier Carlin & Curfman LLC, United States.

Respondent is Hirsch Dev, United States.

2. The Domain Name and Registrar

The disputed domain name <moffitthr.org> 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 12, 2023. On October 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 13, 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) and contact information in the Complaint. The Center sent an email communication to Complainant on October 16, 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 October 19, 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 October 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 14, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 15, 2023.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on November 28, 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 the owner of registration for the word trademark MOFFITT on the Principal Register of the United States Patent and Trademark Office ("USPTO"), registration number 3,047,454, registration dated January 24, 2006 in international classes ("ICs") 16, 41, 42, and 44, covering, *inter alia*, publications, medical educational services and providing health care. Complainant is owner of registration for the word trademark MOFFITT CANCER CENTER on the Principal Register of the USPTO, registration number 4,640,131, registration dated November 18, 2014, in ICs 16, 41, 42, and 44, covering, *inter alia*, publications, medical educational services, maintenance of online data and providing health care, and; word and design trademark, MOFFITT CANCER CENTER, registration number 3,671,302, registration dated August 25, 2009, covering, *inter alia*, publications, medical educational services, maintenance of online data and providing health care.

Complainant is a cancer treatment center based in Florida, United States, first opened to patients in 1986. Complainant is a National Cancer Institute-designated Comprehensive Cancer Center. Complainant maintains a commercial website at "www.moffitt.org" providing a range of information for patients and physicians, and that solicits donations.

According to the Registrar's verification, Respondent is the registrant of the disputed domain name. The disputed domain name was created on July 26, 2023.

The disputed domain name did not resolve to an active website at the time of filing. As of the decision date, the disputed domain name is redirected by Respondent to the website of Complainant. Respondent has used the disputed domain name in connection with a fraudulent employment recruitment scheme. Shortly following registration of the disputed domain name, the disputed domain name was used as the email sender domain in a message falsely purporting to originate from Complainant's human resources recruitment office and transmitted to a prospective employee. This was followed by an email also using the disputed domain name as the sender domain that attached a detailed but fraudulent offer of employment to the same prospective employee. The fraudulent offer of employment purported to originate with an actual officer of Complainant. With respect to the deceptive email and fraudulent offer letter provided by Complainant as evidenced, the targeted prospective employee eventually detected Respondent's intended deception.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Complainant alleges that it owns rights in the trademark MOFFITT and several MOFFITT-formative trademarks, and that the disputed domain name is confusingly similar to those trademarks.

Complainant argues that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Complainant has not authorized Respondent to use its trademark in the disputed domain name or otherwise. (2) Respondent has not used the MOFFITT trademark in connection with a *bona fide* offer of goods or services; (3) Respondent has no trademark or other intellectual property rights in Complainant's trademark or the disputed domain name, and: (4) Respondent is using the disputed domain name in connection with illegal activity, namely a phishing scheme intended to illicit sensitive and valuable information from the intended victims.

Complainant contends that Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent's use of the disputed domain name in connection with an illegal phishing scheme manifestly evidenced bad faith; (2) Respondent knew of Complainant's trademark rights when it registered and used the disputed domain name as evidenced by the way in which it conducted its phishing scheme.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent has notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical address provided in its record of registration. Courier delivery of the Written Notice to Respondent was successfully completed. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "hr", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, here a deceptive and fraudulent phishing scheme, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Respondent registered and used the disputed domain name that is confusingly similar to Complainant’s MOFFITT trademark after Complainant acquired rights in its trademark, and after Complainant established an online presence under its trademark. Respondent used Complainant’s distinctive trademark in its deceptive email scheme. This targeted use of Complainant’s trademark indicates that Respondent knew or should have known of Complainant’s trademark rights when it registered and used the disputed domain name.

Panels have held that the use of a domain name for illegal phishing activity as in this case constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

Respondent used the disputed domain name as the sender domain in emails falsely purporting to originate from Complainant. Such emails evidenced a clear intent to deceive a third-party recipient, presumably for the purpose of securing personal data, including data that may be used to take improper financial advantage of the recipient. Such activity by Respondent constitutes an intentional attempt to attract for commercial gain an Internet user to Respondent’s online location by creating a likelihood of confusion with Complainant’s mark as to Complainant’s affiliation with Respondent’s online location. Respondent’s registration and use evidence bad faith within the meaning of paragraph 4(a)(iv) of the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <moffitthr.org> be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: December 12, 2023