

ADMINISTRATIVE PANEL DECISION

Cabell Publishing Company, LLC v. Predatory Reports,
PREDATORYREPORTS.ORG

Case No. D2024-0845

1. The Parties

The Complainant is Cabell Publishing Company, LLC, United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, PC, United States.

The Respondent is Predatory Reports, PREDATORYREPORTS.ORG, United States.

2. The Domain Name and Registrar

The disputed domain name <predatoryreports.org> 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 February 26, 2024. On February 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2024, 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 February 29, 2024, 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 March 1, 2024.

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 March 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 26, 2024. The Respondent sent email communications to the Center on March 11, 18, 20, and 21, 2024.

The Center appointed Evan D. Brown as the sole panelist in this matter on April 4, 2024. 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

The Complainant provides an online database that contains information regarding academic journals and reports on their publishing activity, business practices and compliance with industry best-practices, as well as providing information regarding publication practices for academic publications and other scholarly literature to prospective authors. The Complainant claims common law rights in the mark PREDATORY REPORTS which it asserts it has been using since June 2020. The Complainant has filed a trademark application with the United States Patent and Trademark Office, but the application has not yet matured to registration. The Complainant asserts that its PREDATORY REPORTS mark has been well-publicized and promoted through its website, through presence and sponsorship at major industry conferences, and via advertisements, newsletters, and email campaigns. Additionally, the Complainant has submitted evidence that the Complainant and its mark have received press mentions on a variety of relevant websites and blogs, including publications of major universities.

The Complainant has asserted that the Respondent used bogus contact information when registering the disputed domain name, namely, the address for the observation deck of the Empire State Building and a phone number used by the management of the Empire State Building who, when called, confirmed they have no record of any tenant operating under the name of the Respondent.

According to the Whois records, the disputed domain name was registered on January 26, 2022. The Respondent has published a website using the disputed domain name, on which it describes itself as “an organization made up of volunteer researchers who have been harmed by predatory publishers and want to help researchers identify trusted journals and publishers for their research”. The Complainant characterizes the Respondent’s website as having the same “goal and intent” as the Complainant’s website. The Complainant submitted evidence suggesting that at least one person has been confused by the Respondent’s website and use of the disputed domain name.

In August and September of 2023, counsel for the Complainant sent cease and desist communications to the Respondent. The Respondent ignored the first communication but responded to the second one in a cursory fashion, asserting that it does not sell any products or services and observing that the Complainant’s trademark application was filed after the Respondent launched its website. In October through December 2023, the Complainant’s counsel engaged in email communications with an individual claiming to own the disputed domain name. During the course of these communications, the individual offered to sell the disputed domain name to the Complainant for USD 80,000. The Complainant also submitted evidence of multiple posts to the social media platform X made by the Respondent, including one in which the Respondent appears to admit its intentions in setting up the website at the disputed domain name was to make fun of the Complainant’s efforts.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent did not file a formal Response to the Complaint but sent a series of emails to the Center on March 11, March 18, March 20, and March 21, 2024. The sum and substance of these email communications is that: (1) the mark PREDATORY REPORTS is a generic term for which the United States Patent and Trademark Office has not granted registration, (2) the Complainant's application to register the PREDATORY REPORTS mark was after the launch of the Respondent's website, (3) that the Respondent does not carry out business on its website, (4) that the Respondent was moving its website address and changing its name, (5) that the disputed domain name was available for sale through GoDaddy, and (6) that it did not consider the Complainant's demands to be legal.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. *Id.* This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

The Complainant asserts that it has rights in the mark PREDATORY REPORTS based on its use in commerce. The Complainant does not own a registration for the mark. 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. [WIPO Overview 3.0](#), section 1.3. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. *Id.*

The Respondent asserts in a conclusory fashion that the term PREDATORY REPORTS is merely generic (and therefore not subject to trademark protection). The Respondent does not provide substantive arguments in support of its assertion (for example, it does not examine the meaning of the words in relation to the services provided under the mark). Nor does the Respondent address the evidence submitted by the Complainant asserting rights in the mark that have arisen from use in commerce.

The Panel finds that the Complainant has asserted facts sufficient to show rights in the PREDATORY REPORTS mark sufficient for purposes of the Policy. The Complainant asserts that its mark has been well-publicized and promoted through its website, through presence and sponsorship at major industry conferences, and via advertisements, newsletters, and email campaigns. These assertions of the Complainant are supported by credible evidence submitted with the Complaint. Additionally, the Complainant has submitted evidence that the Complainant and its mark have received press mentions on a variety of relevant websites and blogs, including publications of major universities.

The disputed domain name incorporates the Complainant's PREDATORY REPORTS mark in its entirety. Disregarding the ".org" portion of the disputed domain name, which is appropriate for the Panel to do, the

Panel finds that the disputed domain name is identical to the Complainant's mark.

Accordingly, the Panel finds that the Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a prima facie showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent, with the burden of proof always remaining with the Complainant. See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts that there has never been any relationship between the Complainant and the Respondent that would give rise to any license, permission, or authorization for the Respondent to use or register the disputed domain name, and that there is no indication of any legitimate uses by the Respondent as an unauthorized party.

The Panel finds that the Complainant has made the required prima facie showing. The Respondent has not presented evidence to overcome this prima facie showing. And nothing in the record otherwise tilts the balance in the Respondent's favor.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

The evidence the Complainant introduced regarding the Complainant's conduct makes it implausible to believe that the Respondent was not aware of the Complainant and its mark when it registered the disputed domain name. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name.

Bad faith use is clear from the Respondent's activities of using the disputed domain name to set up a website to provide services essentially identical to those provided by the Complainant.

Accordingly, the Panel finds that the Complainant has established this third element under 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 <predatoryreports.org> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: April 26, 2024