

ADMINISTRATIVE PANEL DECISION

Premier America Credit Union v. Carolina Rodrigues, PRIVACY LIMITED
Case No. D2024-2254

1. The Parties

The Complainant is Premier America Credit Union, United States of America, represented by Styskal, Wiese & Melchione, LLP, United States of America (“United States”).

The Respondent is Carolina Rodrigues, PRIVACY LIMITED, Belize.

2. The Domain Name and Registrar

The disputed domain name <premieramerica.org> (the “Disputed Domain Name”) is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 31, 2024. On June 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 4, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 4, 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 June 21, 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 June 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 18, 2024.

The Center appointed Nick J. Gardner as the sole panelist in this matter on July 25, 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 is a United States organisation incorporated in California. Its business is that of a credit union providing financial services. Specifically, the Complainant is a credit union that makes loans, opens and maintains depository accounts, and provides related financial services. It has done so since 1957. The Complainant is the proprietor of United States Trademark no. 2594435 for the words "PREMIER AMERICA" registered with the United States Patent and Trademark Office on July 16, 2002. The Panel will refer to this trademark as the "PREMIER AMERICA trademark".

The Disputed Domain Name was registered on August 22, 2000. It resolves to various differing websites depending upon when and where access is attempted, and which typically have some sort of malware content, and which will, for example, invite the user to dial a particular telephone number to resolve the problem that has been introduced by the malware content.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows.

The Disputed Domain Name is identical to the PREMIER AMERICA trademark.

The Respondent has no rights or legitimate interests in the term "premier america".

The Disputed Domain Name was registered and is being used in bad faith. The Complainant says the use of the Disputed Domain Name in connection with manifestly fraudulent activity is clear evidence of bad faith. It says the Respondent's motive was dishonest financial gain presumably from revenue derived from the telephone calls users were dishonestly induced to dial.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Notification of Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

6.2 Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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.

A. Identical or Confusingly Similar

The Panel finds the Disputed Domain Name is identical to the PREMIER AMERICA trademark.

It is well established that the Top-Level Domain (“TLD”), in this case “.org”, is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.11. The omission of the space between the words “PREMIER” and “AMERICA” is not a material difference particularly given the fact that spaces cannot form part of a domain name for technical reasons.

Accordingly, the Panel finds that the Disputed Domain Name is identical to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is 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.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the term PREMIER AMERICA. The PREMIER AMERICA trademark was registered in 2002, which is after the Disputed Domain Name was registered. However, the Panel is satisfied the Complainant will have had earlier unregistered trademark rights in the term PREMIER AMERICA given its continuous trading under that name since 1957. Those rights precede the Respondent’s acquisition of the Disputed Domain Name. The Complainant has therefore established a prima facie case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Name. Moreover, the use of the Disputed Domain Name for dishonest activities can never confer rights or legitimate interests on the Respondent. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

In the present case, the Panel concludes that the deliberate use of the Complainant's PREMIER AMERICA trademark as the Disputed Domain Name, is intended to attract customers of the Complainant, who may then be induced to make telephone calls to deal with the malware content the Respondent has purported to introduce to their computers. That falls squarely within the type of circumstances to which the Policy refers to in (iv) above. See also [WIPO Overview 3.0](#) section 3.4. Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <premieramerica.org> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: August 8, 2024