

## **ADMINISTRATIVE PANEL DECISION**

Empower Annuity Insurance Company of America v. JonCox, Jon Cox LLC  
Case No. D2024-4927

### **1. The Parties**

The Complainant is Empower Annuity Insurance Company of America, United States of America (“United States”) represented by Polsinelli PC, United States.

The Respondent is JonCox, Jon Cox LLC, Seychelles.

### **2. The Domain Names and Registrar**

The disputed domain names <empower-retirements.com>, <empower-retirement.com>, and <participant-empower-retirement.net> are registered with Nicenic International Group Co., Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 28, 2024 in respect of the disputed domain name <empower-retirements.com>. On November 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <empower-retirements.com>. On November 29, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 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 December 4, 2024, adding the disputed domain names <empower-retirement.com> and <participant-empower-retirement.net> (the “Additional Disputed Domain Names”) to the current proceedings. The Center transmitted by email to the Registrar a request for registrar verification in connection with the Additional Disputed Domain Names. The Registrar transmitted to the Center its verification response, confirming that the registrant and its contact details are the same as those associated with the disputed domain name <empower-retirements.com>.

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 December 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 3, 2025.

On January 10, 2025, the Center informed the Parties that due to an oversight the Additional Domain Names had not been included in the Center's notification of Complaint, however, "the contact details of the registrant remain the same as those associated with the original domain name <empower-retirements.com>". The Center further informed the Parties that it would proceed with the panel appointment.

The Center appointed Zoltán Takács as the sole panelist in this matter on January 14, 2025. 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**

Initially founded over 130 years ago the Complainant and its subsidiaries offer a vast array of financial and business products and services in the United States. The Complainant has over USD 1.2 trillion in assets under administration and manages a variety of financial plans for over 70,000 organizations.

Since as least as early as 2014, the Complainant has provided many of these products and services under the marks EMPOWER and EMPOWER RETIREMENT (the "EMPOWER marks").

The Complainant is among others the owner of the United States Trademark Registration No. 5743480 EMPOWER RETIREMENT and design registered since May 7, 2019. The mark consists of a flag comprised of red and white wavy lines above the vertical display of the blue word "EMPOWER" over the grey word "RETIREMENT", all on a white background.

The Complainant also owns domain names incorporating the EMPOWER marks. For example, the domain name <empower.com> was registered on July 27, 1994, and the domain name <empower-retirement.com> on October 13, 2014, and the Complainant is using them to transact business, including with its customers.

The disputed domain names were registered on the following dates: <empower-retirements.com> on November 17, 2024; <empower-retirement.com> on November 26, 2024; and <participant-empower-retirement.net> on December 3, 2024, and were used for websites that mimicked the appearance of the Complainant's landing page and solicited users to input confidential credentials into the authentication forms on the impersonating websites.

Currently the disputed domain names do not resolve to active websites.

#### **5. Parties' Contentions**

##### **A. Complainant**

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

Notably, the Complainant contends that:

- the disputed domain names either contain its EMPOWER RETIREMENT mark or are typo variants of the mark and are therefore confusingly similar to it;

- the Respondent has no rights or legitimate interests in respect of the disputed domain names and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii) or (iii) or the Policy; and

- the Respondent has registered the disputed domain names with the Complainant's business and trademark in mind, used them to impersonate the Complainant and attempt to extract confidential information from unsuspecting customers, which is evidence of bad faith registration and use.

The Complainant requests that the disputed domain names be transferred from the Respondent to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

As a general rule, "domain names held the by the same registrant(s) may be added to a complaint before notification to the respondent(s)/formal commencement of the relevant proceeding" provided the Complainant holds relevant trademark rights regarding all domain names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.12.1. These conditions are clearly satisfied in these proceedings.

In order to succeed on a complaint, a complainant must evidence each of the three elements required by paragraph 4(a) of the Policy, namely that:

- (i) the domain names are 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 domain names; and
- (iii) the domain names have been registered and are being used in bad faith.

### **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 the complainant's trademark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

The 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 Complainant's trademark is replicated and clearly recognizable within the disputed domain name <participant-empower-retirement.net>. Accordingly, it is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The disputed domain names <empower-retirments.com> and <empower-retitrtment.com> are typo variants of the Complainant's EMPOWER RETIREMENT mark. Letter "e" is omitted and letter "s" is added in the word element "retirments" and letter "t" is added, and second letter "e" is omitted in the word element "retitrtment" of the disputed domain names. Domain names which consist of an obvious, or intentional misspelling of a trademark are considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

While the addition of other terms, here “participant” may bear on assessment of the second and third elements, the Panel finds that the addition of such term does not prevent a finding of confusing similarity between the disputed domain name <participant-empower-retirement.net> and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds that 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 the Respondent may demonstrate rights or legitimate interests in the disputed domain names.

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 the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The Complainant has submitted sufficient and uncontested evidence that it holds well-established prior rights in the EMPOWER RETIREMENT mark.

The Complainant has never authorized the Respondent to use its mark, in a domain name, or otherwise.

There is no evidence that the Respondent is commonly known by the disputed domain names.

As mentioned above, the Respondent has used the disputed domain names to effectively impersonate the Complainant and solicit unsuspecting users to input confidential credentials into the authentication forms on the websites mimicking the landing page at the Complainant’s subdomain name <participant.empower-retirement.com>.

UDRP panels have held that the use of domain names for illegal activity, here impersonation/passing off and phishing can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds that 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.

Having reviewed the record, the Panel finds that the Respondent’s registration and use of the disputed domain names constitutes bad faith under the Policy.

As mentioned above, the Respondent has mimicked the Complainant's landing page at its subdomain name <participant.empower-retirement.com> and used the disputed domain names to solicit unsuspecting users to input confidential credentials into the authentication forms on the impersonating websites.

Thus, in the view of the Panel, the Respondent has registered the disputed domain names with the Complainants' rights in mind intending to confuse Internet users with an association with the Complainant and their trademark. Such targeting is fraudulent and evidence of bad faith.

Additionally, use of the disputed domain names for illegal activity, in this case impersonation of the Complainant and attempts of phishing, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The disputed domain names are currently inactive. However, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

In this context the Panel notes the reputation of the Complainant's trademark; the composition and previous use of the disputed domain names and finds that in the circumstances of this case the current passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

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 names <empower-retirements.com>, <empower-retirement.com>, and <participant-empower-retirement.net> be transferred to the Complainant.

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: January 27, 2025