

ADMINISTRATIVE PANEL DECISION

Cognition AI, Inc. v. Windy Wink
Case No. DAI2024-0050

1. The Parties

The Complainant is Cognition AI, Inc., United States of America (“United States”), represented by Latham & Watkins LLP, United States.

The Respondent is Windy Wink, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <devinai.ai> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2024. On June 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 17, 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 June 18, 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 20, 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 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 12, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on July 16, 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 Delaware, United States corporation. It is an artificial intelligence (“AI”) laboratory, focusing on the creation of an AI-powered tool that can function as a software engineer.

On March 12, 2024, the Complainant unveiled a flagship product named DEVIN, which it described in its publicity materials as “... the world’s first fully autonomous AI software engineer.”

The disputed domain name was registered on March 13, 2024.

The Complainant exhibits evidence that the disputed domain name has resolved to a website headed “Devin AI – The First AI Software Engineer by Cognition Labs.” The website makes further reference to the Complainant and its DEVIN product and includes a button marked “Try It For Free.”

5. Parties’ Contentions

A. Complainant

The Complainant submits that its launch video for the DEVIN product, released on March 12, 2024, gained over one million views on YouTube. It states that its subsequent YouTube videos publicizing DEVIN have gained 640,000 views and that its X platform page has amassed over 125,000 followers since launch. It also provides evidence of unsolicited, third-party coverage of the DEVIN product, including mentions within Bloomberg, the Wall Street Journal, and Business Insider.

The Complainant contends that, as a result of promotion and publicity including the above, the name DEVIN has become a distinctive identifier that the public associates with the Complainant and its product, and that the Complainant has therefore obtained common law trademark rights in respect of the mark DEVIN. The Complainant adds that the Respondent’s obvious targeting of its DEVIN trademark supports the contention that it had achieved significance as a source identifier.

The Complainant submits that the disputed domain name is confusingly similar to its DEVIN trademark. It states that the disputed domain name incorporates the DEVIN trademark in full, and that the addition of the two letters “ai” does not avoid confusion with that trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its DEVIN trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither bona fide commercial use nor legitimate noncommercial or fair use of the disputed domain name. The Complainant contends that, on the contrary, the Respondent has used the disputed domain name only for the purpose of confusing consumers and trading off the Complainant’s DEVIN trademark.

The Complainant submits that the disputed domain name was registered and has been used in bad faith. The Complainant contends that, in view of the Respondent’s use of the disputed domain name for a website which impersonates the Complainant, it is obvious that the Respondent knew of the Complainant’s trademark when it registered the disputed domain name. The Complainant adds that the trademark DEVIN is an arbitrary mark and could not have been registered by the Respondent coincidentally. The Complainant further observes that the Respondent registered the disputed domain name one day after the Complainant’s launch announcement of its DEVIN product.

The Complainant submits that, upon clicking upon the link buttons included on the Respondent's website, the user is taken to a website at "www.crushon.ai", which it states is a sexually explicit website with which visitors can pay to interact. The Complainant submits that the website is unsafe and that the Respondent's redirection of Internet users to it may damage the Complainant's reputation and brand. The Complainant further contends that the Respondent is using the relevant misdirection to profit from the Complainant's goodwill.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those 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.

A. Identical or Confusingly Similar

In this case, the Complainant does not rely upon any trademark registrations. However, it claims to have obtained common law rights in the name and mark DEVIN, by virtue of that mark having become exclusively associated by the public with the Complainant's autonomous AI product.

Based on the Complainant's evidence of its use of the DEVIN mark and the recognition its related product has received, the Panel is satisfied that the Complainant has obtained common law rights in the mark DEVIN, in the nature of unregistered trademark rights, for the purposes of the Policy. The Panel considers that the Respondent's targeting of the Complainant's DEVIN mark supports the Panel's finding that it had achieved significance as a source identifier for the purposes of the Policy.

The disputed domain name is identical to the Complainant's trademark DEVIN, but for the addition of the letters "ai", which do not prevent the Complainant's trademark from being recognizable within the disputed domain name or the disputed domain name from being confusingly similar to the Complainant's trademark.

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. The Panel finds, on the contrary, that the Respondent has used the disputed domain name to impersonate the Complainant and dishonestly target the goodwill attaching to its DEVIN trademark, which cannot give rise to rights or legitimate interests on the Respondent's part.

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

In order to establish the third element under the Policy, the Complainant is required to show that the Respondent both registered, and has used, the disputed domain name in bad faith.

With regard to registration, a complainant cannot normally establish registration in bad faith unless it can show that it had relevant trademark rights at the date the disputed domain name was registered. In this case, the disputed domain name was registered only one day after the Complainant launched its DEVIN product, which raises the question of whether common law trademark rights could have been created by that time.

In the circumstances of this case, the Panel finds sufficient common law rights to have been likely created by the time the Respondent registered the disputed domain name, principally as a result of the significant public interest generated by the Complainant's announcement of its DEVIN product. Moreover, as discussed in section 3.8.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), bad-faith registration may be found where a respondent registered the disputed domain name to take advantage of the complainant's "nascent", i.e. as yet undeveloped, trademark rights, as is clearly the case in this instance.

The Panel finds further that, based on both the date of registration of the disputed domain name and the Respondent's use of the disputed domain name, it is obvious that the Respondent registered the disputed domain name with the Complainant's (nascent) trademark in mind and with the intention of taking unfair advantage of the goodwill attaching to that trademark.

The Panel finds the Complainant's trademark DEVIN to be distinctive in nature and that the disputed domain name is inherently misleading, as inevitably suggesting to Internet users (by combining the Complainant's trademark DEVIN with the term "AI") that it must legitimately relate to the Complainant's autonomous AI product. Moreover, the Respondent's website is clearly fraudulent in nature, as representing an impersonation of the Complainant. The Panel finds further that the Respondent has sought misleadingly to attract Internet users to that website, for the purpose of diverting them to the sexually explicit "www.crushon.ai" website, from which it must be assumed to obtain click-through or other revenues.

The Panel finds therefore that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being used in bad faith.

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 <devinai.ai> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: July 29, 2024