

## **ADMINISTRATIVE PANEL DECISION**

Apex Learning Inc. v. Privacy Service Provided by Withheld for Privacy ehf /  
Family Man

Case No. D2022-1159

### **1. The Parties**

Complainant is Apex Learning Inc., United States of America (“U.S.”), represented by K&L Gates, United States of America.

Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Family Man, U.S.

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

The disputed domain name <apexlearning.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 3, 2022. On April 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on April 6, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 8, 2022.

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 Respondent of the Complaint, and the proceedings commenced on April 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 2, 2022.

The Center appointed Michael A. Albert as the sole panelist in this matter on May 10, 2022. 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 a digital curriculum service provider for secondary and post-secondary students.

Complainant registered the <apexlearning.com> domain name in 1999.

Complainant is the owner of several registered trademarks, including:

- U.S. Trademark APEX LEARNING, No. 2,724,678, registered on June 10, 2003;
- U.S. Trademark APEX LEARNING, No. 2,791,691, registered on December 9, 2003; and
- U.S. Trademark APEX LEARNING, No. 2,798,077, registered on December 23, 2003.

Respondent registered the disputed domain name on January 5, 2022. The disputed domain name was used in phishing attempts on Complainant's clients.

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

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

The disputed domain name is nearly identical and confusingly similar to Complainant's APEX and APEX LEARNING marks.

Complainant has prominently and extensively used, promoted, and advertised the Marks and the <apexlearning.com> domain name for over twenty-one (21) years. The deliberate misspelling in the disputed domain name constitutes typosquatting.

Respondent has no rights or legitimate interests in the disputed domain name.

Respondent registered and is using the disputed domain name in bad faith. Respondent is using the disputed domain name in phishing attacks on Complainant's clients.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

The disputed domain name is identical in spelling, meaning, and sound to Complainant's well-established trademark, but for an easily-overlooked typographical variation, namely replacing the "rn" with "m" in "learning". It is well established that such minor typographical variations or misspellings do not avoid a finding of confusing similarity between a mark and a corresponding domain name. Prior UDRP panels have also found a difference of only one letter between a disputed domain name and a complainant's mark does not prevent a finding of confusing similarity.

The deliberate misspelling in the disputed domain name constitutes typosquatting and renders the disputed domain name confusingly similar to Complainant's Mark. See *SIEMENS AG v. Omur Topkan*, WIPO Case

No. [D2013-1318](#) (holding that <siemens.com> was confusingly similar to SIEMENS mark, where the disputed domain name used Turkish character to create a domain that was “visually almost identical to the Complainant’s trademark”).

The Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

Respondent has no rights or legitimate interests in the disputed domain name for purposes of paragraph 4(a)(ii) of the Policy. Respondent is not known by Complainant’s mark. Complainant confirms that Respondent does not have license, permission, or authorization to use Complainant’s mark. There is no evidence demonstrating any legitimate noncommercial or fair use of the disputed domain name by Respondent.

Furthermore, Respondent is directing communications to Complainant’s clients with false messages of outstanding invoices in an attempt to steal funds. Respondent’s current use of the disputed domain name to conduct fraudulent phishing activity does not constitute a *bone fide* offering of goods and services. See *Kimley-Horn and Associates, Inc. v. Abraham Hashim*, WIPO Case No. [DCO2019-0017](#) (holding the “use of the domain name for such a fraudulent purpose as phishing, obviously, cannot be held to constitute a *bona fide* use of the disputed domain name” where respondent used the disputed domain to impersonate complainant’s employees in connection with an email phishing attack direct at complainant’s clients).

The Panel finds that Complainant has satisfied paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

Given the long use and renown of Complainant’s APEX LEARNING marks, and the striking similarity between the mark and the disputed domain name, it is highly implausible that Respondent was not aware of the APEX LEARNING mark at the time Respondent registered the disputed domain name. Here, the replacement in “learning” is particularly likely to cause confusion because an “m” can be almost indistinguishable from the letters “rn” together. Such knowledge is sufficient to establish that the disputed domain name was appropriated by Respondent in bad faith. See *Caesars World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#) (finding bad faith where respondent registered the domain name CAESARSPALACEPOKER.COM after it knew or should have known about complainant’s trademarks).

Further, Respondent is using the disputed domain name in phishing attempts on Complainant’s clients. The registration of a domain name in furtherance of phishing scams supports a finding of bad faith registration and use. See *BHP Billiton Innovation Pty Ltd. v. Domains By Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#) (April 21, 2016) (“[T]he use of an email address associated with the disputed domain name, to send a phishing email for the purposes of dishonest activity is in itself evidence that the disputed domain name was registered and is being used in bad faith.”).

The Panel finds that Complainant has satisfied paragraph 4(a)(iii) 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 <apexlearning.com> be transferred to Complainant.

/Michael A. Albert/  
**Michael A. Albert**  
Sole Panelist  
Date: May 23, 2022