

ADMINISTRATIVE PANEL DECISION

Pryor Learning, Inc. v. Contact Privacy Inc. Customer 715157251 / Ryan Wilsey

Case No. D2022-2158

1. The Parties

Complainant is Pryor Learning, Inc., United States of America (“United States”), represented by Hovey Williams LLP, United States.

Respondent is Contact Privacy Inc. Customer 715157251, Canada / Ryan Wilsey, United States.

2. The Domain Name and Registrar

The disputed domain name <careertrack.info> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 10, 2022. On June 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 14, 2022, 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 June 16, 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 June 21, 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 June 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 27, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on August 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 nonprofit educational organization that offers written publications, pre-recorded electronic and digital media, and in-person and online seminars, webinars, and conferences in the fields of business, business management, communication, personal improvement, customer service and time management among other subjects. Complainant offers its educational services through its official <careertrack.com>, and <pryor.com> domain names and website. Complainant owns valid and subsisting registrations for the CAREERTRACK trademark in the United States (including Reg. No. 1,295,077), with the earliest priority dating back to June 18, 1982.

Respondent registered the disputed domain name on May 1, 2020. At the time this Complaint was filed, the disputed domain name resolved to a website that ostensibly offers educational courses in subjects like “business management”, “welding technician”, and “accounting professional” in connection with Complainant’s CAREERTRACK trademark.

5. Parties’ Contentions

A. Complainant

Complainant asserts ownership of the CAREERTRACK trademark and has adduced evidence of trademark registrations in the United States with earliest priority dating back to June 18, 1982. The disputed domain name is confusingly similar to Complainant’s CAREERTRACK trademark, according to Complainant, because: it incorporates Complainant’s CAREERTRACK trademark in its entirety; Complainant’s trademark constitutes the predominant element of the disputed domain name; and Complainant’s CAREERTRACK trademark is inherently distinctive.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: Respondent’s illegitimate and fraudulent website and social media use of Complainant’s CAREERTRACK trademark in connection with putative educational services in direct competition with Complainant; the lack of any authorization or license between Respondent and Complainant; the lack of any evidence Respondent is commonly known by Complainant’s CAREERTRACK trademark; and the lack of any evidence supporting nominative fair use by Respondent given Respondent’s prolific use throughout Respondent’s website and prominent use in the disputed domain name.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: the twenty years by which Complainant’s use of its CAREERTRACK trademark predates Respondent’s registration of the disputed domain name; Respondent’s illegitimate website that defrauds unsuspecting customers; and Respondent’s fraudulent attempts to hold itself out to be Complainant, or a licensee or authorized distributor of Complainant’s well-known educational services.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. the disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the CAREERTRACK trademark has been registered in the United States with priority dating back to June 18, 1982. Thus, the Panel finds that Complainant's rights in the CAREERTRACK trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's CAREERTRACK trademark. In this Complaint, the disputed domain name is identical to Complainant's CAREERTRACK trademark because, disregarding the ".info" generic Top-Level Domain ("gTLD"), the trademark is contained in its entirety within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name [...] [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar [...]"). In regards to gTLDs, such as ".info" in the disputed domain name, they are generally viewed as a standard registration requirement and are typically disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

In view of Complainant's registration of the CAREERTRACK trademark and Respondent's incorporation of that identical trademark in its entirety in the disputed domain name, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where Complainant puts forward a *prima facie* case, as in this Complaint, and Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1. It is evident that Respondent, identified by Whois data for the disputed domain name as "Ryan Wilsey", who

appears to work at an online marketing agency named “Noticestry”, is not commonly known by the disputed domain name or Complainant’s CAREERTRACK trademark. Noting the commercial nature of the website resolving from of the disputed domain name, and related social media pages, to offer competing services under Complainant’s longstanding CAREERTRACK trademark, Respondent’s use of the disputed domain name does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use.

In view of Complainant’s *prima facie* case and Respondent’s failure to come forward with any evidence supporting rights or legitimate interests in the disputed domain name, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent’s documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. by using the disputed domain name, Respondent has intentionally attempted 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 of a product or service on Respondent’s website or location.

Where parties are both located in the United States and the complainant has obtained a federal trademark registration pre-dating a respondent’s domain name registration, panels have applied the concept of constructive notice, subject to the strength or distinctiveness of the complainant’s trademark, or circumstances that corroborate respondent’s awareness of the complainant’s trademark. [WIPO Overview 3.0](#), section 3.2.2. In this Panel’s view, when the disputed domain name was registered on May 1, 2020, Respondent had constructive knowledge of Complainant’s pre-existing rights in Complainant’s CAREERTRACK trademark under United States law. See, e.g., *Champion Broadcasting System, Inc. v. Nokta Internet Technologies*, WIPO Case No. [D2006-0128](#) (Applying the principle of constructive notice where both parties are located in the United States). Indeed, circumstances in this case corroborate Respondent’s awareness of Complainant and Complainant’s CAREERTRACK trademark, including: (i) the near forty years by which Complainant’s federal trademark registration predates Respondent’s registration of the disputed domain name; and (ii) Respondent’s ostensible use of the disputed domain name in connection with educational services, specifically electronic educational courses, in direct competition with Complainant.

As referenced above, circumstances indicating Respondent has sought to profit from creating a likelihood of confusion with Complainant’s trademark would support a finding of bad faith within paragraph 4(b)(iv) of the Policy. Further, panels have also held that evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the complainant’s trademark would satisfy complainant’s burden under the third element. [WIPO Overview 3.0](#), section 3.1. Noting the likelihood of Respondent’s awareness of Complainant and Complainant’s CAREERTRACK trademark and the use of the disputed domain name to offer competing services, the Panel finds it more likely than not that the

Respondent has at minimum sought to take unfair advantage of or otherwise abuse the Complainant's trademark.

Moreover, a panel may undertake limited factual research into matters of public record where it considers such information useful to assessing the case merits and researching a decision. This includes visiting the website linked to the disputed domain name in order to obtain more information about Respondent or its use of the domain name, consulting historical resources like the Internet Archive, reviewing dictionaries, encyclopedias, or accessing trademark registration or other governmental databases. [WIPO Overview 3.0](#), section 4.8.

Taking into account the evidence presented in the Complaint, in addition to some limited factual research, the Panel finds that additional circumstantial evidence supports a finding that Respondent has targeted Complainant and its customers and sought to profit from creating a likelihood of confusion with the Complainant and Complainant's CAREERTRACK trademark, including specifically: (i) Respondent does not provide any valid physical address or location through either its social media page or website; (ii) a Whois privacy protection through the Registrar was activated to mask the Respondent's identity; (iii) the physical address provided to the Registrar by Respondent corresponds to a putative dental supply store; (iv) Respondent's website advertises, "We work with major universities all over the country to match you with the right school!", whereas hyperlink advertisements to the disputed domain name appear on numerous inauthentic social media pages and websites purporting to be associated with various universities in the United States (most of which featured pay-per-click advertisements to Complainant, and all of which feature commonly-hosted and identical pictorial images); and (v) Respondent has failed to come forward with any evidence to explain any of the foregoing, or for that matter its registration and use of the disputed domain name. To that end, given the level of interconnectedness between the disputed domain name and the apparent online marketing services offered through Respondent's company, Noticestry LLC, the Panel considers it more likely than not that Respondent is engaged in some form of online lead generation through false association between the disputed domain name and Complainant's CAREERTRACK trademark, as well as various universities in the United States.

Indeed, panels have held that despite the lack of a general, affirmative obligation for domain name registrants to conduct a trademark or Internet search engine search prior to registration, sophisticated parties "who regularly register domain names for use as pay-per-click landing pages cannot be willfully blind to whether a particular domain name may violate trademark rights. In this context, a failure to conduct adequate searching may give rise to an inference of knowledge" and bad faith. *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.* WIPO Case No. [D2007-1141](#); *Aygaz Anonim Sirketi v. Arthur Cain*, WIPO Case No. [D2014-1206](#) (Citing a sophisticated website developer respondent's failure to "carry out a far simpler Internet search engine search" which "would in the panel's view have been likely to disclose the existence of the Complainant [...]"). In the instant Complaint, it is evident that Respondent is associated with a sophisticated online marketing firm, and as such Respondent cannot be willfully blind to whether the disputed domain name infringes Complainant's CAREERTRACK trademark.

In view of the foregoing, the Panel concludes that the third element of the Policy has been established.

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 <careertrack.info> be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: September 6, 2022