

ADMINISTRATIVE PANEL DECISION

Peak Technical Services, Inc. v. Debra Diaz

Case No. D2023-1332

1. The Parties

The Complainant is Peak Technical Services, Inc., United States of America (“United States” or “U.S.”), internally represented.

The Respondent is Debra Diaz, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 28, 2023. On March 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 29, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 3, 2023, 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 April 3, 2023. References in this Decision to the Complaint are to the amended Complaint.

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 April 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 4, 2023.

The Center appointed Richard G. Lyon as the sole panelist in this matter on May 16, 2023. The Panel finds that it was properly constituted and has jurisdiction to decide this administrative proceeding. The Panel has

submitted his 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 company organized under the laws of the Commonwealth of Pennsylvania, U.S., that provides technical recruiting and staffing services, such as contract staffing, contract-to-hire, and direct hire services, placing engineering, engineering support, and information technology professionals with employers. The Complainant holds service marks duly registered on the principal register of the United States Patent & Trademark Office (“USPTO”) for PEAK TECHNICAL STAFFING USA, U.S. No.3973161, and PEAK TECHNICAL SERVICES, INC., U.S. No. 1846931, both for personnel placement and consulting services and both registered June 2010.

The Respondent is an individual with a listed residence in the State of California, U.S. She registered the disputed domain name on March 21, 2023. The Complainant alleges and the Panel verified that the disputed domain name does not resolve to an active website.

Annex 5 to the Complaint is a copy of an email communication dated March 22, 2023, using the disputed domain name, identified in the email as “HRIVP Payments, PEAK Technical Staffing,” to an individual who had applied for a job with the Complainant. The text of the letter informed the applicant that she had been hired and, “[a]s part of our employment process,” requested her to complete several U.S. tax forms that are commonly requested of temporary employees. Information called for in these forms include addresses and Social Security numbers.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s USPTO-registered service marks; that the Respondent lacks rights or a legitimate interest in the disputed domain name; and that the Respondent registered and used the disputed domain name in bad faith by using it unlawfully to obtain personally identifiable information from job applicants by misrepresenting herself as affiliated with or employed by the Complainant.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To obtain a transfer of the disputed domain name the Complainant must establish:

- (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 was registered and is being used in bad faith.

Policy, paragraph 4(a). These requirements are conjunctive; all must be satisfied. The Complainant bears the burden of proving each of these elements by a preponderance of the evidence.

Unlike civil litigation in the United States, the Respondent's default does not automatically result in a decision for the Complainant, nor does it constitute an admission of any factual matter pleaded in the Complaint. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3, and cases there cited.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires proof of two elements: the Complainant's ownership or licensed rights in a trademark or service mark, and identity of or confusing similarity of the disputed domain name to that mark.

The Complainant has satisfied the first element with proof of its service marks registered on the principal register of the USPTO. [WIPO Overview 3.0](#), section 1.2.1. ("Where the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.")

When the mark and disputed domain name are not identical, as in this case, assessing similarity "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 disputed domain name". *Id.*, section 1.7. That comparison here yields obvious similarity, as the disputed domain name merely substitutes the letter "t" for the word "Technical" in the Complainant's mark. Use of the dominant feature of the mark, "PEAK", in the disputed domain name reinforces that conclusion.

The Complainant has established both requirements of paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove a negative. "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. 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.

The Complainant has made its *prima facie* case by demonstrating that it has not licensed the Respondent to use its marks and that there is no indication that the Respondent is commonly known by the disputed domain name. The Respondent has come forward with nothing to counter this. The Complainant succeeds on this Policy element.

C. Registered and Used in Bad Faith

The Complainant has also proven bad faith in registration and use of the disputed domain name. It is now well established that a domain name need not be used for imitative website content to prove bad faith. See [WIPO Overview 3.0](#), section 3.4, in which phishing and identity theft, the bad faith acts the Complainant alleges, are expressly identified as examples.

As with any element of paragraph 4 of the Policy, the alleged bad faith acts must be proven, not simply alleged. The email letter identified in Section 4 is satisfactory proof on this matter. That letter reveals Respondent's knowledge of the Complainant and use of the disputed domain name to impersonate the Complainant by means of a domain that parrots the Complainant's service marks for an improper and possibly unlawful purpose. As stated in *NFX Capital Management, LLC v. Rana Yar*, WIPO Case No. [D2023-1276](#), this letter "demonstrates the Respondent's awareness of and intentional targeting of the Complainant when registering and using the disputed domain name." That is the epitome of bad faith.

As the letter was sent one day after the Respondent registered the disputed domain name, the Panel has no difficulty inferring the Respondent's registration was for that bad faith purpose.

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, <peaktstaffing.com>, be transferred to the Complainant.

/Richard G. Lyon/

Richard G. Lyon

Sole Panelist

Date: May 24, 2023