

ADMINISTRATIVE PANEL DECISION

Seed of Life Center for Early Learning and Preschool, Inc. v. Ama Thomas Case No. D2024-2936

1. The Parties

The Complainant is Seed of Life Center for Early Learning and Preschool, Inc., United States of America (“United States”), represented by K&L Gates, LLP, United States.

The Respondent is Ama Thomas, United States.

2. The Domain Name and Registrar

The disputed domain name <seedsoflifechildcare.com> is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 17, 2024. On July 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 18, 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 (Wix.com Ltd.) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 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 August 2, 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 August 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 26, 2024. The Respondent sent an email communication to the Center on August 8, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on August 30, 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 corporation established under the laws of the State of Washington, United States and headquartered in Seattle, Washington. According to the Complaint, the Complainant has operated childcare centers “in multiple locations since 1997”. The Complainant operates a website at “www.seedoflifellc.com” (the “Complainant’s website”). The Complainant’s website identifies three locations where the Complainant offers childcare services, all in Seattle, Washington.

The Complainant states that it has offered childcare services under a mark with a drawing of children’s faces on flowers and the words “Seed of Life Center for Early Learning and Preschool, Inc.” since October 2017. The Complainant does not attach historical evidence of sales, advertising, or public recognition to support a claim for a common law mark from that time.

The Complainant holds United States trademark registration number 5731952, (registered on April 23, 2019), for a composite mark comprised of a drawing above the words “Seed of Life Center for Early Learning and Preschool Inc.”

The disputed domain name was created on October 15, 2021. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Ama Thomas, listing no organization, a postal address in the State of New York, United States, and a Gmail contact email address.

The disputed domain name resolves to the Respondent’s website headed “Seeds of Life Child Care”, advertising the licensed childcare services of the Respondent at a single location in Brooklyn, New York. According to the Respondent’s website, the Respondent’s childcare facility has a staff consisting of two people, with a third person “coming soon”.

The Respondent did not file a formal Response (but see below as to its email sent to the Center), and the Respondent’s website does not provide information about the history of the Respondent’s operations. However, the Panel notes that the Respondent’s social media accounts on Facebook and Instagram include posts and photos of the Respondent’s childcare business under the name “Seeds of Life Child Care” dating back to January 2021, with earlier posts showing what is evidently the same childcare facility operating under a name abbreviated as “cqacc”.

The Complainant’s counsel sent the Respondent a cease-and desist letter dated March 11, 2024, stating that the Respondent’s use of a similar name for childcare services in Brooklyn, New York was “directly overlapping” and “in direct competition” with the Complainant’s trademarked child care services “in the Seattle area”. The letter demanded that the Respondent cease all use of the name “Seeds of Life” but did not expressly mention the disputed domain name or request its transfer. The Respondent did not reply.

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 name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its figurative mark with the textual element “Seed of Life Center for Early Learning and Preschool, Inc.” The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name, claiming that the Complainant has not given permission to use its mark and the Respondent is not commonly known by a corresponding name. The Complaint attaches negative search results from CompuMark for any “Seeds of Life Child Care” trademarks or company names in the United States or worldwide. The Complainant argues that the Respondent’s service offering could not be “bona fide” because it “directly competes with Complainant for overlapping goods and services”.

The Complainant infers bad faith based on the Respondent's "constructive notice" of the Complainant's United States trademark registration, which was published two and a half years before the Respondent registered the disputed domain name. The Complainant argues that the Respondent's use of a domain privacy service is further evidence of bad faith, as is the Respondent's failure to reply to the cease-and-desist letter. The Complainant contends that the Respondent deliberately attempted to mislead Internet users with a confusingly similar domain name for commercial gain, attracting them to the website of a directly competing entity.

B. Respondent

The Respondent's August 8, 2024, email to the Center read in part as follows:

"My day care is a group family day care in a home space in Brooklyn NY. It's is [sic] filed with the state as Seeds of Life Child Care LLC. What's the problem. I don't fully understand."

The Center provided further information about filing a Response, but the Respondent did not do so.

The Panel notes that the online database of the New York Department of State, Division of Corporations lists Seeds of Life Child Care LLC as a New York limited liability company established on May 10, 2018, under the name Children's Quality Advanced Child Care LLC (which would be abbreviated to "CQACC" as in the Respondent's earlier social media posts), with a certificate of amendment filed April 1, 2022 to formally change the name to Seeds of Life Child Care LLC. The Panel notes that the license issued by the New York State Division of Child Care Services in August 2020 to the Respondent Ms. Thomas showed the name of the facility at that time as "Children's Quality Advanced Child Care LLC".

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following:

- (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.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

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 name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark (the registered composite mark including the textual element "Seed of Life Center for Early Learning and Preschool, Inc.") for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The Panel finds the mark is recognizable within the disputed domain name, given that "seeds" is simply the plural of "seed" and "seed of life" is the distinctive portion of the textual element of the Complainant's composite mark (the other words are disclaimed in the registration). Accordingly, the disputed domain name

is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7, 1.9 (misspellings), and 1.10 (design elements and disclaimers).

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

The Panel finds 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 a disputed domain name.

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.

The Panel observes that, before notice to the Respondent of the dispute, the Respondent appears to have used the disputed domain name in connection with a bona fide offering of goods or services. [WIPO Overview 3.0](#), section 2.2.

The Panel also notes that the Respondent has been commonly known by the disputed domain name or a name correspondent to the disputed domain name. [WIPO Overview 3.0](#), section 2.3.

These findings are based on the facts recounted above. They are evident from a perusal of the Respondent’s website, social media pages, and the online database of the New York Division of Corporations. It appears that the Respondent has been doing business under the name Seeds of Life Child Care LLC since early 2021, and the Respondent’s company filed an amendment to its charter to formally change its name to that form in April 2022.

The Panel concludes that the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

Given the Panel’s conclusion on the second element of the Complaint, it is not strictly necessary to make findings on the third element. Nevertheless, the Panel considers that it would be instructive to comment on the Complainant’s arguments concerning bad faith.

The Complainant relies entirely on the notion of constructive notice to assert that the Respondent “had or can be expected to have had prior notice of Complainant’s trademarks at the time the disputed domain name was registered”, because the Complainant had registered a similar composite trademark in the United States some two and a half years earlier, citing UDRP decisions referencing Section 22 of the United States Trademark Act (“Registration of a mark on the principal register [...] shall be constructive notice of the registrant’s claim of ownership thereof.”)

The [WIPO Overview 3.0](#), section 3.2.2, observes that the constructive notice concept derived from United States trademark law has been applied “in limited circumstances” in UDRP proceedings and “may depend in part on the complainant’s reputation and the strength or distinctiveness of its mark, or facts that corroborate an awareness of the complainant’s mark”. The Panel does not find UDRP precedents that rely wholly on

constructive notice of a registered mark, and that is unsurprising, since the Policy requires a showing of bad faith in the registration and use of a disputed domain name. This Panel is unwilling to impose a sweeping duty on individual domain name registrants such as the Respondent to conduct a comprehensive trademark search before registering a domain name corresponding to a name under which they are doing business. In this case, there is no evidence that the Complainant's mark was a well-known mark, and the Complainant has not presented additional reasons to assume that the Respondent would likely be aware of the mark. Constructive notice is simply too thin a reed to support the claim of bad faith here.

Similarly, while it is not clear if the Respondent used a privacy service or it was merely an administrative measure of the Registrar, in either event, the Respondent was not hiding, as the Respondent's website advertises the Respondent's business and furnishes the full contact information that the Complainant was able to use to send a cease-and-desist letter. The Respondent chose not to reply to that letter. Many others would similarly choose not to reply to a letter that claimed that a childcare facility in Brooklyn, New York offered "overlapping" services in "direct competition" with childcare services in Seattle, Washington, 2851 miles (4588 kilometers) distant. That would be rather a long drive for a parent to drop off a child every morning.

So, the Panel also does not find the Complainant's arguments persuasive under the Policy, paragraph 4(b)(iv), (attracting Internet users for commercial gain with a confusingly similar domain name). It simply is not plausible that the Respondent, running a two- or three-person childcare facility in Brooklyn that was already doing business under the name "Seeds of Life Child Care", (a) was likely aware of the Complainant's trademark and (b) decided to register the disputed domain name to lure childcare customers across the country.

Thus, the Complaint would fail under the third element of the Policy, even if it had not already failed under the second.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

In this case, the Complainant is represented by counsel and yet failed adequately to address the obvious issues under the second and third elements. The disputed domain name was already in use for an established business under a corresponding name. Moreover, the nature of these small service businesses is highly localized, and the Complainant was clearly overreaching in claiming that the Respondent in Brooklyn, New York is a "direct competitor" of the Complainant in Seattle, Washington and must have been targeting the Complainant's mark. The Complainant retained a third-party service to investigate whether the Respondent had trademark rights or a company with a corresponding name but apparently failed to take the simple step of looking at the company registrations database in New York State, where the Respondent's business is located, as is evident on the Respondent's website. On these facts, even in the absence of a Response, the Panel finds it appropriate to make a finding of attempted Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: September 13, 2024