

## **ADMINISTRATIVE PANEL DECISION**

PowerSchool Group LLC, and Schoology, LLC v. Privacy service provided by Withheld for Privacy ehf / Polyakov Andrey  
Case No. D2022-2168

### **1. The Parties**

The Complainants are PowerSchool Group LLC, and Schoology, LLC (indistinctively referred as the Complainant, or both together as the Complainants), United States of America (“United States”), represented by Norton Rose Fulbright LLP, United States.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Polyakov Andrey, Ukraine.

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

The disputed domain name <schoolgyfree.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 June 14, 2022. On June 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 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. On June 29, 2022, the Complainant asked to suspend the proceedings. On June 30, 2022, the Center confirmed the suspension of the proceedings. On August 10, 2022, the Center reinstated the UDRP proceedings. The Center sent an email communication to the Complainant on August 10, 2022, 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 12, 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 the Respondent of the Complaint, and the proceedings commenced on August 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 5, 2022.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on September 13, 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**

The first Complainant, PowerSchool Group LLC, is the parent company of the second Complainant, Schoology, LLC.

The Complainants commercialize a learning management system for schools and businesses that enables its users to create, manage, and share assignments and resources.

The first Complainant is the owner of the following trademark registration for SCHOOLOGY, among others:

- United States Trademark registration No. 5181714, registered on April 11, 2017, in Classes 9, 41 and 42.

The second Complainant is the owner of the domain name <schoology.com> since 2007.

The disputed domain name <schoologyfree.com> was created on November 12, 2021.

On November 29, 2021, the Complainants sent a cease-and-desist letter to the named registrant of the disputed domain name. No response was received.

At the time of filing of the Complaint, the disputed domain name resolved to a website displaying the Complainants' SCHOOLOGY trademark and logo, and a visual from the Complainants' official website. The Respondent's website contained information regarding the Complainants' products, and offered a tool allegedly enabling Internet users to download the Complainants' application for free. The website also displayed information about competing products apps to the Complainants.

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

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

According to the Complainant, the disputed domain name is confusingly similar to its SCHOOLOGY registered trademark as it captures the entirety of its trademark with the mere adjunction of the generic term "free".

Further, the Complainant argues that the Respondent is neither affiliated with, nor has it been licensed or permitted to use the SCHOOLOGY mark or any domain names incorporating SCHOOLOGY. The Complainant also claims that the Respondent is not commonly known by the disputed domain name. According to the Complainant, it is clear that the choice of the SCHOOLOGY trademark aims at creating a direct affiliation with the Complainant and its business. Therefore, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name within the meaning of the Policy.

Finally, the Complainant contends that the Respondent has used and registered the disputed domain name in bad faith. Considering the fact that the disputed domain name resolves to a website displaying the Complainant's logo and offers tools allegedly enabling users to download the Complainant's application for free, the Respondent was aware of the existence of the Complainant and of its trademark when it registered the disputed domain name. Furthermore, the Respondent has intentionally misappropriated the Complainant's trademark as a way of redirecting Internet users to the Respondent's website, only to offer content unrelated to, and not approved, by the Complainant. Moreover, the Respondent used the Complainant's reputation to increase Internet traffic on its website and for its own commercial gain, which, according to the Complainant, amounts to use in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Procedural issue**

Under paragraph 10 of the Rules, panels are required to ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case and also that the administrative proceeding takes place with due expedition.

The Respondent's street address is stated to be in Kharkiv, Ukraine, where an international conflict is taking place. This circumstance may have impacted the Notification of Complaint, and as a result the Respondent's opportunity to defend itself.

The Panel needs accordingly to decide whether the present proceedings should continue, as requested by the Complainant or whether they should be suspended. In the Panel's view, the relevant circumstances are as follows.

Firstly, it is unclear whether the Respondent is in fact domiciled in Ukraine. The website connected to the disputed domain name is in the English language without any reference to Ukraine.

Secondly, the Complainant tried to contact the Respondent by email in November 2021, *i.e.* before the beginning of the conflict in Ukraine, but the Respondent did not react.

Thirdly, for the reasons set forth below, the Panel had no serious doubt that the Respondent registered and used the disputed domain name with the purpose of creating confusion with the Complainant's website and products.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, Namecheap, Inc., is in Arizona, United States of America.

Finally, the Center also sent the Notification of Complaint by email to the Respondent at the email address as recorded with the Registrar. There is no evidence that the email was not successfully delivered to the Respondent.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and decides that the administrative proceeding should continue (for a similar procedural decision, see *Netbet Entreprises Ltd v. Privacy Service provided by Withheld for Privacy ehf / Vladimir Vladimir, Crowd inc*, WIPO Case No. [D2022-1420](#)).

## 6.2. Merits

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name registered by the respondent has been registered and is being used in bad faith

### A. Identical or Confusingly Similar

The disputed domain name incorporates entirely the Complainant's SCHOLOGY mark, with the adjunction of the term "free".

The addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to a domain name where the relevant trademark is recognizable within the disputed domain name is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8).

In the present case, the trademark SCHOLOGY is clearly recognizable in the disputed domain name. The mere addition of the term "free" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

UDRP panels accept that a gTLD, such as ".com", may be disregarded when assessing whether a domain name is identical or confusing similar to a trademark (see [WIPO Overview 3.0](#), section 1.11).

The Panel finds accordingly that the Complainant has successfully established the requirement under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

Based on the information submitted by the Complainant, the Respondent does not appear to have rights or legitimate interests in respect of the disputed domain name, nor has the Complainant granted to the Respondent any authorization to use the disputed domain name. Moreover, there is no evidence indicating that the Respondent is commonly known by the disputed domain name.

The Respondent does not appear to have operated any *bona fide* or legitimate business under the disputed domain name and is not making a noncommercial or fair use of the disputed domain name. Instead, the disputed domain name resolves to a website displaying the Complainant's SCHOLOGY trademark and logo, as well as content from the Complainant's website, and offers Internet users to download the Complainant's application for free. Such use further supports the apparent lack of rights or legitimate interests of the Respondent in the disputed domain name. Indeed, impersonating the Complainant or make it appear that there is a link with it can hardly be a legitimate or fair use.

Furthermore, UDRP panels consider that even where a domain name consists of a trademark plus an additional term (at the second- or top-level), such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)).

In view of the above, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and that the Respondent's silence corroborates such *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Complainant has satisfied the condition set out in paragraph 4(a)(ii) of the Policy.

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

Given that the trademark SCHOOLGY of the Complainant is distinctive, and that the Respondent used the Complainant's logo and mark on his website, the Panel accepts that the Respondent was aware of the existence of the Complainant and of its SCHOOLGY trademark at the time of the registration of the disputed domain name. Accordingly, the Panel finds that the disputed domain name was registered in bad faith.

Under paragraph 4(b)(iv) of the Policy, the use of a disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of a website or location or of a product or service on the website or location, amounts to evidence of registration and use in bad faith.

The Respondent used the disputed domain name to resolve to a website displaying the Complainant's trademark and logo, and other content, and purportedly offering for free the Complainant's application. Such use was apt to create the false impression that the Respondent's website was operated or endorsed by the Complainant. Consequently, by using the disputed domain name in such manner, the Respondent intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source and affiliation of its website. Such behavior constitutes use in bad faith under paragraph 4(b)(iv) of the Policy.

The Complainant has also demonstrated that the Respondent has been involved in ten UDRP procedures, in which UDRP panels ordered the transfer of the concerned domain names. The Respondent may accordingly be said to have engaged into a pattern of registering domain names reproducing trademarks of third parties, in order to prevent the owners of the trademarks to reflect them in a corresponding domain name. Such behavior amounts to registration and use in bad faith according to paragraph 4(b)(ii) of the Policy.

For the reasons set out above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith, and that the Complainant has satisfied the condition set forth in 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 <schoolgyfree.com> be transferred to the Complainant.

*/Anne-Virginie La Spada/*

**Anne-Virginie La Spada**

Sole Panelist

Date: September 27, 2022