

ADMINISTRATIVE PANEL DECISION

1 Voice Sales Inc. v. Alan Williams
Case No. D2022-2467

1. The Parties

Complainant is 1 Voice Sales Inc., United States of America (“United States”), represented by Vorontsov Law Firm, PLLC, United States.

Respondent is Alan Williams, United States.

2. The Domain Name and Registrar

The disputed domain name <1voice.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 7, 2022. On July 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 8, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 July 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 1, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on August 4, 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.

On August 4, 2022, Respondent submitted an informal, and slightly tardy, Response, in which he stated that he had not become aware of this proceeding until that day. It appears that the notice of proceeding was sent to an email address provided to him by the Registrar (and in turn to the Center), but which Respondent seldom checks.

On August 8, 2022, Respondent sent a further email to the Center, attaching a spreadsheet and stating that he was consulting with a trademark attorney and would be submitting a Response "posthaste."

On August 11, 2022, Respondent submitted a formal Response. In its discretion, the Panel has considered this Response.

On August 12, 2012, several days after Respondent announced his intention to file a formal Response and one day after the Response was filed, Complainant sent an email to the center, objecting to the untimely Response and seeking leave to file a Reply to the Response if the latter is admitted by the Panel.

On August 17, 2022, the Panel issued Procedural Order No. 1, which stated:

"Complainant shall have until August 20, 2022 to submit a very brief Reply to Respondent's Response, and shall not address the alleged tardiness of the Response, since the Panel has already determined that it will accept the Response. Respondent shall have until August 26, 2022 to respond (very briefly) to Complainant's Reply."

The Parties timely responded to Procedural Order No. 1. The Parties' supplemental submissions added very little of value to the record here.

4. Factual Background

Complainant alleges as follows:

"The Complainant 1 Voice Sales Inc, f/k/a/ 1 Voice Tech Inc, d/b/a/ 1Voice ('1Voice') is a Florida-based Internet company providing telecommunication and voice over internet protocol ("VoIP") services throughout the United States. The company 1Voice has been providing a wide range of VoIP services, including calling, texting, messaging, faxing, video conferencing, automated assistance, and other cloud-based telecommunication services."

"Since its inception, 1Voice has been using the service marks '1Voice,' a word mark, as well as a stylized graphical logo of the word mark, and has been continuously expanding its business and the 1Voice brand. Thanks to the quality of its service, marketing, and consistent branding, 1Voice's customer base grew to 94 accounts and across 19 states by 2019. The company 1Voice has expended tens of thousands of dollars into digital marketing, commercials and building the '1Voice' brand."

"The company 1Voice has built such a strong brand and online presence that the word '1Voice' has become distinct and synonymous with VoIP services. One evidence of this is the automatically generated pay-per-click ('PPC') advertisements for other VoIP services on the parked page on [the Domain Name]."

Complainant annexed to the Complaint a handful of invoices to its clients, going back to 2015, which show Complainant's use of the trademark 1VOICE. Complainant also annexed a number of marketing materials showing its use of the mark 1VOICE. Further, Complainant annexed a number of invoices from technical marketing firms who provide marketing services to Complainant for various social media platforms, including Facebook. Some additional examples of Complainant's use of the trademark is provided in response to the Panel's Procedural Order No. 1.

Complainant operates a commercial website accessible via the domain names <1voicetech.com> and <invoice.net>.

Complainant holds two registered trademarks for 1VOICE, including word mark 1VOICE registered with the United States Patent and Trademark Office (“USPTO”), USPTO Reg. No. 6,713,147, registered on April 26, 2022 in Class 38 in connection with “telecommunication services in the nature of providing telephone features, namely, call waiting, call identification, call forwarding, and message waiting (...), a dedicated toll-free number, voicemail, multiple mailbox extensions...” The date of first use in commerce for this mark is indicated as May 3, 2013. Complainant also holds USPTO Reg. No. 6,712,976 for the stylized mark 1VOICE, registered on the same day as the word mark in connection with similar services, and indicating the same date of first use in commerce.

The Domain Name was registered on November 20, 2000. The Domain Name resolves to a parking page apparently populated with sparse content provided by the Registrar. There are various hyperlinks at the parking page, including “Audio to Text,” “Phone Voip Service,” and “Speak to Text.” According to Complainant, these links lead the user to sites operated by Complainant’s competitors, and these links provide pay-per-click (“PPC”) revenue for Respondent.

The original registrant of the Domain Name back in 2000 is not clear from this record. There appears to be common ground between the Parties, however, that Respondent was not the original registrant. Complainant alleges that Respondent appears to have registered the Domain Name at some point between late 2019 and mid-2020. Respondent himself states that he registered the Domain Name on July 6, 2018. Annexed to the Response is a receipt bearing that date and showing that Respondent purchased the Domain Name via auction for USD 8,000.

Complainant annexed to the Complaint a copy of Respondent’s *curriculum vitae*, which CV shows that Respondent is computer-savvy, and well-versed in telecommunications software and the “Domain Name System.” The CV is offered in aid of Complainant’s allegation that Respondent was aware or should have been aware of Complainant’s 1VOICE trademark when he acquired the Domain Name.

The entirety of Respondent’s August 4, 2022 informal Response is as follows:

“I am the current owner of the 1voice.com domain. I purchased this domain back in 2018 for the purposes of creating an online social media platform using distributed app technology powered by distributed ledger technology (DLT). This technology is new and emerging and has been quite challenging to find talent to develop. This is the reason there is no website right now for 1voice.com. I have invested tens of thousands of dollars along with thousands of hours working on this technology and just heard about this complaint TODAY.”

“I am not ‘cybersquatting’ on this domain and intend to use it for the purposes above. Those purposes in no way compete with the complainant. Complainant registered their trademark in April of this year and I believe complainant did this for the sole purpose of abusing the legal process to take my domain name against my will. Attached is a copy of my domain purchase from July of 2018.”

“Complainant registered their domain as ‘1voicetech.com’ according to ICANN on October 6th, 2017 long before I purchased 1voice.com. They had ample opportunity to secure that domain but failed to do so. They had ample opportunity to file for a trademark long before I purchased 1voice.com but failed to do so. Had they filed their trademark it would have come up during my initial search. Attached is the ICANN records verifying the same.”

“I’m asking WIPO to dismiss this complaint with prejudice.”

In a separate email to the Center on August 4, 2022, Respondent stated:

“It has come to my attention that a complaint has been filed against 1voice.com for a trademark violation. Based on the evidence I have seen this trademark was only filed and approved April 22nd of this year. I have owned this domain for years prior.

“You may contact me by replying to this email address or you may call me direct at [phone number redacted]. This is the first I'm hearing of this matter and I'm open to discuss the details.”

In his August 11, 2022 formal Response, Respondent alleges as follows:

“Respondent purchased the disputed domain www.1voice.com through a public Godaddy.com auction listing on July 6, 2018. This domain purchase was part of a bona-fide business plan to build a social media platform for political discussion and voter engagement, which preparations and detailed planning occurred in 2016 and 2017. At the time of the registration of the domain, and up until the date that Respondent became aware of the dispute, Respondent had never heard of, nor known the existence of Complainant or any of Complainant’s alleged rights.”

In addition to the transaction receipt for the USD 8,000 purchase of the Domain Name, Respondent annexes to his Response a PDF version of document reflecting a “module” of Respondent’s business plans and activities during 2016 and 2017, with time-stamps accompanying the entries on the document. Respondent states that he was populating this document over time on a platform called “global ark,” which platform he ceased using when he converted the data to an Excel Spreadsheet on June 9, 2017. A screenshot indicating this transition is included among Respondent’s materials.

Apart from the “module” described above and the receipt showing the purchase of the Domain Name for USD 8,000 in July 2018, there was no evidence provided to support Respondent’s claim that he has spent “tens of thousands of dollars” and “thousands of hours” to develop the business he described in his Response. For instance, there are no contemporaneous receipts reflecting the purchase of goods or services in aid of the business plan, or communications with third parties reflecting the new venture. In an affidavit submitted in response to Procedural Order No. 1, Respondent states that his plans to develop his business faltered because he had not realized how difficult it is to find and hire good computer programmers, and that the general business slowdown attendant to COVID-19 exacerbated his efforts to develop the business.

Respondent denies, in his sworn affidavit, that he has derived any revenue from the hyperlinks on the parking page to which the Domain Name resolves, asserting that the Registrar set up the parking page. Further, Respondent states that, while his CV shows that he has some computer savvy, he is not experienced in terms of trademark rights, domain name acquisitions, and the other forms of expertise characteristic of an opportunistic domainer. Respondent’s affidavit includes the statement that the Domain Name at issue here was the first domain name Respondent had ever bought.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent’s primary assertions are set forth in the “Factual Background” above.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademarks 1VOICE through registration demonstrated in the record. The Panel also concludes that the Domain Name is identical to that mark.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel need not consider whether Respondent has rights or legitimate interests in respect of the Domain Name, given the Panel's decision below on the "bad faith" issue.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

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

The Panel concludes that Complainant has failed to carry its burden of proving bad faith registration of the Domain Name. For a complaint to succeed under the UDRP, there must be a showing (among other things) that, on a balance of probabilities, Respondent more likely than not had the complainant's trademark in mind

when registering the domain name at issue. Here, that showing has not been made.

At the time the Domain Name was registered in July 2018, Complainant had fewer than 100 customers (94 as of 2019). Little or no evidence of the mark's renown is provided with the Complaint, or, indeed, with Complainant's reply to Procedural Order No. 1. Although the trademark registrations indicate a date of first use in commerce going back several years before Respondent bought the Domain Name at auction, there is no evidence that the mark was well known enough that by July 2018 that Respondent would likely have been aware of it. The actual registration of the marks did not occur until well after the Domain Name had been acquired by Respondent. In a sworn affidavit, Respondent states that he had never heard of Complainant or its trademark at the time he purchased the Domain Name.

The Panel also notes that the combination of words "one voice" (including as used with a number) is not unusual. Indeed, sentences like, "Despite the size of the crowd, it spoke with one voice when the issue was raised at the meeting," approach the status of a cliché. This consideration, coupled with the lack of evidence of pre-registration strong common law rights in July 2018, make Respondent's flat (and sworn) denial of awareness of Complainant's trademark rather plausible.

It bears noting that the UDRP is concerned chiefly with abusive domain name registration and use, and is not designed primarily to address disputes over competing trademark rights or questions of trademark seniority and the like. Whether Complainant has any legal recourse beyond the ambit of the UDRP is not for this Panel to say. It suffices here to conclude that this case does not present a clear instance of cybersquatting.

The Complainant fails.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: August 31, 2022