

ADMINISTRATIVE PANEL DECISION

Givelify LLC v. Warren Owens, ContractPal, Inc.
Case No. D2022-2604

1. The Parties

The Complainant is Givelify LLC, United States of America (“United States”), represented by Kolawole Law Firm LLC, United States.

The Respondent is Warren Owens, ContractPal, Inc.¹, United States.

2. The Domain Name and Registrar

The disputed domain name <givifytravel.com> (the “Disputed Domain Name”) is registered with Amazon Registrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 17, 2022. On July 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 18, 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 the Complainant on July 27, 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 July 28, 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 July 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 18, 2022.

¹ At the time of the filing of the Complaint, the Respondent’s identity was masked by a privacy service.

The Center appointed Lynda M. Braun as the sole panelist in this matter on September 2, 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 30, 2022, the Center received an email communication from a third party named Steven Hawes indicating that he is the beneficial holder of the Disputed Domain Name. On September 12, 2022, the Panel issued the Administrative Panel Procedural Order No. 1 (“Panel Order No. 1”), requesting the third party to express an intent to participate in the proceeding. The Panel granted 5 days, through September 17, 2022, to the third party within which to submit a response. The Center did not receive any further communication in response to Panel Order No. 1.

4. Factual Background

The Complainant is a mobile software development company whose principal product is the “Givelify” App, which is available on the Apple App and Google Play Stores. The Complainant connects fintech with philanthropy and is a highly rated and fast-growing mobile application worldwide. The Complainant aims to encourage a new type of philanthropy by leveraging the power of technology to make the act of giving a part of everyday life. Through its technology, the Complainant makes it easy for individuals to support their places of worship and/or charities with a few taps on their smartphone. Through its platform, the Complainant empowers places of worship and charities to build relationships with new supporters, creating a new way of accepting charitable donations. The Givelify App has been downloaded by over 500,000 people from both the Apple App Store and Google Play Store. The Givelify App is a leading donation app used by over 45,000 places of worship and nonprofits in the United States.

The Complainant is the owner of the following trademarks, registered with the United States Patent and Trademark Office (“USPTO”): GIVELIFY, United States Registration No. 4,491,096, registered on March 4, 2014, in international class 9; GIVELIFY CHAI, United States Registration No. 5,605,087, registered on November 13, 2018, in international class 9; and GIVELIFY QUICKGIVE, United States Registration No. 5,605,085, registered on November 13, 2018, in international class 9. The Complainant also owns several other GIVELIFY-related trademarks that are currently registered or pending before the USPTO.

The aforementioned trademarks will hereinafter be referred to as the “GIVELIFY Mark”.

The Complainant owns the domain name <givelify.com>, which was registered on April 30, 2012. The domain name resolves to the Complainant’s official website at “www.givelify.com”, which describes the Complainant’s organization and explains how individuals can become donors to their charitable organization of choice using the Complainant’s App.

The Disputed Domain Name was registered on January 28, 2020, and resolves to a website that purportedly offers travel services for the reservation of hotel rooms, flights and car rentals. Upon learning of the Disputed Domain Name’s resolving travel website, the Complainant’s attorney reserved a hotel room using the instructions on the website. After the purchase, however, no receipt was issued, no hotel reservation existed, and the attorney was not reimbursed for his payment. Moreover, the Respondent’s name or the Disputed Domain Name did not appear on the attorney’s credit card.

5. Parties' Contentions

A. Complainant

The following are the Complainant's contentions:

- the Disputed Domain Name is confusingly similar to the Complainant's GIVELIFY Mark;
 - the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;
 - the Disputed Domain Name was registered and is being used in bad faith; and
- the Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy, or alternatively, cancellation of the Disputed Domain Name.

B. Respondent

The Respondent did not reply to the Complainant's contentions. As described above, the Center received a communication from a third party purporting to be the beneficial owner of the Disputed Domain Name, but received no additional communication although the Panel permitted the third party to respond.

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (i) the Disputed Domain Name 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 Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the GIVELIFY Mark.

It is uncontroverted that the Complainant has established rights in the GIVELIFY Mark based on its several years of use as well as its registered and pending trademarks for the GIVELIFY Mark in the USPTO. The consensus view is that "registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive". See *CWI, Inc. v. Domain Administrator c/o Dynadot*, WIPO Case No. [D2015-1734](#). The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the GIVELIFY Mark. Moreover, the registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1. Thus, the Panel concludes that the Complainant has rights in the GIVELIFY Mark.

The Disputed Domain Name consists of a misspelling of the GIVELIFY Mark followed by the term "travel", and then followed by the generic Top-Level Domain ("gTLD") ".com". The Disputed Domain Name misspells the GIVELIFY Mark by omitting the letters "el" from the Disputed Domain Name and then adding the term "travel" to create a domain name that is confusingly similar to the Complainant's GIVELIFY Mark.

Such a minor modification to a trademark is commonly referred to as “typosquatting” and seeks to wrongfully take advantage of errors by a user in typing a domain name into a web browser. The misspelling of the Disputed Domain Name does not prevent a finding of confusing similarity to the GIVELIFY Mark. See [WIPO Overview 3.0](#), section 1.9 (“A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element”); see also *Silversea Cruises, Ltd. v. Whois Agent, Domain Protection Services, Inc. / Domain Vault, Domain Vault LLC*, WIPO Case No. [D2018-2306](#) (“The Domain Name [silverseas.com] is virtually identical to the SILVERSEA trademark but for the addition of the letter ‘s’ creating a plural version of the SILVERSEA trademark. The addition of the letter ‘s’ does not distinguish the Domain Name from the SILVERSEA trademark and is a common form of typosquatting.”).

It is well established that a domain name that wholly incorporates a trademark – even a misspelling thereof – may be deemed confusingly similar to that trademark for purposes of the Policy despite the addition of other terms. As stated in section 1.8 of [WIPO Overview 3.0](#), “where the relevant trademark is recognizable within the disputed domain name, the addition of other terms [...] would not prevent a finding of confusing similarity under the first element”. For example, numerous UDRP decisions have reiterated that the addition of a dictionary or descriptive term to a trademark does not prevent a finding of confusing similarity. See *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and *Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. [D2008-0923](#).

Further, the addition of a gTLD such as “.com” in a domain name is technically required. Thus, it is well established that, as here, such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

There is no evidence in the record suggesting that the Respondent has rights or legitimate interests in the Disputed Domain Name. The Complainant has not authorized, licensed, or otherwise permitted the Respondent to use the Complainant’s GIVELIFY Mark. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name nor has the Respondent made any demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. The name of the Respondent has no apparent connection to the Disputed Domain Name and there is no evidence in the record that would suggest that it is related to a trademark or trade name in which the Respondent has rights.

Further, the Complainant does not have any business relationship with the Respondent and based on the use made of the Disputed Domain Name to resolve to the Respondent’s website to allegedly provide travel services that the Respondent in effect never delivers, the Panel finds that the Respondent is not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, the Panel infers that the Respondent uses the Disputed Domain Name as part of a phishing scheme to obtain money and/or confidential information from users of the website.

Finally, the composition of the Disputed Domain Name, comprising the GIVELIFY Mark, except with the omission of the letters “el”, cannot constitute fair use here.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that, based on the record, the Complainant has demonstrated the existence of the Respondent’s bad faith pursuant to paragraph 4(b) of the Policy as set forth below.

First, based on the circumstances here, the Panel concludes that the Respondent registered and is using the Disputed Domain Name in bad faith in an attempt to attract Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s GIVELIFY Mark as to the source, sponsorship, affiliation or endorsement of the Disputed Domain Name’s resolving webpage. The Respondent’s registration and use of the Disputed Domain Name indicate that such registration and use had been done for the specific purpose of trading on the name and reputation of the Complainant and its GIVELIFY Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and “Madonna.com”*, WIPO Case No. [D2000-0847](#) (“[t]he only plausible explanation for Respondent’s actions appears to be an intentional effort to trade upon the fame of Complainant’s name and mark for commercial gain”).

Second, the Panel concludes that the Respondent knew about the Complainant’s rights in the GIVELIFY Mark when it registered the Disputed Domain Name, since it deleted the letters “el” of GIVELIFY to misdirect Internet users from the Complainant’s website to the Respondent’s website by capitalizing on typing mistakes made by users. See *Nutricia International BV v. Eric Starling*, WIPO Case No. [D2015-0773](#). Considering the circumstances in this case, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant’s GIVELIFY Mark at the time the Respondent registered the Disputed Domain Name. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). Since the Respondent misspelled the Disputed Domain Name to misdirect users from the Complainant’s website to the Respondent’s website by capitalizing on potential typing mistakes, such conduct is evidence of bad faith. See *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) (“It is well-settled that the practice of typosquatting, of itself, is evidence of the bad faith registration of a domain name.”). Therefore, it can be inferred that the Respondent had actual knowledge of the Complainant and its GIVELIFY Mark when it registered the confusingly similar Disputed Domain Name. UDRP panels have found that the registration of a domain name that is confusingly similar to a well-known trademark by an unaffiliated entity can create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Third, the Disputed Domain Name was registered several years after the Complainant first began using its GIVELIFY Mark and after the Complainant registered the GIVELIFY Mark. Therefore, the Panel finds that the Respondent had the Complainant’s GIVELIFY Mark in mind when registering the Disputed Domain Name.

Finally, the Panel concludes that the Respondent has made deliberate use of the website to which the Disputed Domain Name resolves to induce users into disclosing personal information while using the website to obtain travel services based on a fraudulent phishing scheme.² See *Balfour Beatty plc v. Steve Levett*, WIPO Case No. [D2017-1941](#).

² For example, as described in the Factual Background Section above, the Complainant’s attorney reserved a hotel room using the Disputed Domain Name’s resolving website. After the purchase, however, no receipt was issued, and no hotel reservation existed. Moreover, the Respondent’s name did not appear on the credit card statement. Therefore, the website did not actually handle travel arrangements as indicated by the Disputed Domain Name, and instead used individuals’ money to make travel reservations that never materialized, and did not reimburse those individuals for payments made. Thus, the Panel concludes that the Disputed Domain Name was used as part of a fraudulent phishing scheme. Wrongful use of a confusingly similar trademark to extort information from unsuspecting and unwary people, by using the Disputed Domain Name for phishing activity, is considered abusive registration of the Disputed Domain Name under the Policy. See *CareerBuilder, LLC v. Stephen Baker*, WIPO Case No. [D2005-0251](#).

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <givifytravel.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: September 22, 2022