

ADMINISTRATIVE PANEL DECISION

uBreakiFix, Co. v. Milen Radumilo

Case No. D2022-4273

1. The Parties

The Complainant is uBreakiFix, Co., United States of America (“United States”), represented by Adams and Reese LLP, United States.

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <ubreakifixdeals.com> is registered with ! #1 Host China, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 10, 2022. On November 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 14, 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 (Perfect Privacy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 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 November 16, 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 November 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 8, 2022.

The Center appointed Linda Chang as the sole panelist in this matter on December 15, 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 Complainant is a provider of repairing services and related products and services for various devices such as computers, laptops, tablets and phones, and serves over six million customers at over five hundred retail stores throughout the United States, Canada, and the Caribbean.

The Complainant owns a number of UBREAKIFIX trademark registrations, including but not limited to United States trademarks UBREAKIFIX Registration No. 3855288 registered on October 5, 2010, and No. 4364495 registered on July 9, 2013, and Canada trademark UBREAKIFIX Registration No. TMA901622 registered on April 21, 2015.

The disputed domain name was registered on October 31, 2022, and resolves to a page comprising pay-per-click links.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to the Complainant's UBREAKIFIX trademark.

The Complainant further states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant finally states that the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

The Respondent's default will not necessarily result in a decision in favor of the Complainant. In accordance with paragraph 4(a) of the Policy, the Complainant must demonstrate each of the following:

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

A. Identical or Confusingly Similar

After reviewing the evidence submitted by the Complainant, the Panel is convinced that the Complainant has rights over the UBREAKIFIX trademark.

The generic Top-Level-Domain ".com" is commonly disregarded in the assessment of the confusing similarity test since it is a standard requirement of registering a domain name. The recognizable part of the disputed domain name, "ubreakifixdeals", incorporates the Complainant's UBREAKIFIX trademark in its entirety and

the word “deals”. The Panel determines that mere addition of the word “deals” does not prevent the disputed domain name from being confusingly similar to the Complainant’s UBREAKIFIX trademark.

Consequently, the Panel concludes that Complaint has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

In the present case, the disputed domain name is resolving to a parking page comprising pay-per-click links. It is obvious that the Respondent is intentionally diverting Internet users for commercial gain to such websites by taking unfair advantage of the reputation of the Complainant’ UBREAKIFIX trademark. The Panel determines that such use will not create any legitimate interests on the Respondent nor represent a *bona fide* offering of goods or services by the Respondent.

The Complainant makes it clear that the Respondent is not and has never been a licensee or franchisee of the Complainant. The Panel holds that the Complainant has made out a *prima facie* case and the burden of proving the rights or legitimate interests then shifts to the Respondent. The Respondent however failed to rebut and come forward with any evidence demonstrating its rights or legitimate interests in the disputed domain name.

Consequently, the Panel concludes that Complaint has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Given the distinctiveness of the Complainant’s UBREAKIFIX trademark, the Panel holds that the Respondent should have been aware of the Complainant’s trademark at the time of registering the disputed domain name.

The Respondent is using the disputed domain name to host a parking site of pay-per-click links, which in the circumstances of this case is sufficient for a finding of registration and use in bad faith. By choosing a domain name confusingly similar to the Complainant’s trademark and using it to host pay-per-click links, the Respondent is quite obviously intending to make a commercial gain by taking advantage of the good will and reputation of the Complainant’s trademark through the above links.

After receipt of the cease-and-desist letter from the Complainant, the Respondent chose to ignore the demands of the Complainant and apparently listed the Domain Name for sale at USD 2,888, a price likely in excess of its out-of-pocket expense of registering the disputed domain name. Moreover, according to the evidence submitted by the Complainant, the Respondent has a pattern of conduct condemned by paragraph 4(b)(ii) of the Policy. Bad faith registration and use can be inferred.

Consequently, the Panel concludes that the Complaint has satisfied 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 <ubreakifixdeals.com> be transferred to the Complainant.

/Linda Chang/

Linda Chang

Sole Panelist

Date: December 29, 2022