

ADMINISTRATIVE PANEL DECISION

Rubrik, Inc. v. Milen Radumilo

Case No. D2022-4295

1. The Parties

The Complainant is Rubrik, Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <myrubrik.com> is registered with SNAPNAMES, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 11, 2022. On November 11, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 17, 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 amendment to the Complaint on November 18, 2022.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint, and the proceedings commenced on November 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2022.

The Center appointed Philippe Gilliéron as the sole panelist in this matter on December 23, 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 cybersecurity company whose mission is to secure the world's data. The Complainant helps organizations achieve business resilience against cyberattacks, malicious insiders, and operational disruptions. It has offices in four locations in the United States as well as four offices in Europe, two offices in the Middle East, and six offices in Asia-Pacific. The Complainant counts 2,500 employees and serves 4,000 customers for a generated income of USD 400 million in software annual subscriptions and recurring revenues.

The Complainant has received numerous awards, including being named the Hot Company in Data Security by Cyber Defense Magazine (CDM), the industry's leading electronic information security magazine, by Gartner as a Leader in the 2022 Magic Quadrant for Enterprise Backup and Recovery Software Solutions, as well as to the Forbes Cloud 100, the annual ranking of the top private cloud companies in the world.

The Complainant owns numerous trademarks on a worldwide basis consisting in whole or in part of the term "rubrik" such as notably:

- European Union verbal trademark RUBRIK 013783841 that was registered on June 11, 2015, in classes 9 and 42 with a priority date as of September 2, 2014;
- United States verbal trademark RUBRIK 5219685 that was registered on June 6, 2017, in class 6 with a first use date of April 27, 2015.

The Complainant holds the domain name <rubrik.com>, which was created on June 30, 2001. It further creates a custom URL for each customer on its Rubrik Secure Cloud platform in the form of ["customer name"].my.rubrik.com.

The Respondent registered the disputed domain name on June 17, 2022. On September 14, 2022, a user informed the Complainant by email that, after having typed by mistake the disputed domain name instead of "my.rubric.com" in her Rubrik customer URL, she received an alert that the site was trying to load a virus on her computer. The Respondent has further used the disputed domain name to offer it for sale for prices ranging from USD 688 to USD 2,888, to monetize it on a parking page offering pay-per-click remuneration and by redirecting it to a pornographic website called "StripChat".

The Respondent has been involved in 158 domain name dispute decisions at WIPO as a losing respondent and in 96 domain name dispute decisions at the NAF as a losing respondent. See, e.g., *BNP Paribas v. Milen Radumilo*, WIPO Case No. [D2022-3503](#); *Moderna, Inc., and ModernaTX, Inc. v. Milen Radumilo*, WIPO Case No. [D2022-2654](#).

5. Parties' Contentions

A. Complainant

The Complainant first argues that the disputed domain name is confusingly similar to its trademark as it entirely incorporates the term RUBRIK.

The Complainant then affirms that the Respondent has no rights or legitimate interests in the disputed domain name, as it has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the RUBRIK trademark in any manner. To the Complainant's knowledge, the Respondent has never been commonly known by the disputed domain name and has never acquired any trademark or service mark rights in the disputed domain name.

By using the disputed domain name in an effort to distribute viruses to the Complainant's customers who mistakenly omit the dot between "my" and "rubrik" in a Rubrik customer URL, the Respondent clearly lacks rights or legitimate interests in the disputed domain name as such use cannot be considered as a *bona fide*

offering of goods or services. The same goes with regards to the use of the disputed domain name in connection with a pay-per-click page that includes links for various services, in relation to a pornographic website, or in order to offer it for sale.

The Complainant finally argues that the disputed domain name was registered and is being used in bad faith. Because the disputed domain name is “so obviously connected with” the Complainant, the Respondent was clearly aware of the Complainant’s trademark and its actions suggest “opportunistic bad faith” in violation of the Policy. The uses highlighted above further demonstrate that the disputed domain name has been used in bad faith. The Complainant finally adds that the Panel should find bad faith here because the Respondent has “engaged in a pattern of such conduct” pursuant to paragraph 4(b)(ii) of the Policy by registering not only the disputed domain name but also the domain names in the numerous domain name disputes referred to above.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “[...] 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”.

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

- (i) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or a 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.

A. Identical or Confusingly Similar

According to the Policy, paragraph 4(a)(i), the Complainant has to prove that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant holds several RUBRIK trademarks as referred to above.

UDRP panels widely agree that incorporating a trademark into a domain name can be sufficient to establish that the domain name is identical or confusingly similar to a registered trademark for purpose of the Policy (see, e.g., *Uniroyal Engineered Products, Inc. v. Nauga Network Services*, WIPO Case No. [D2000-0503](#); *Thaigem Global Marketing Limited v. Sanchai Aree*, WIPO Case No. [D2002-0358](#); and *F. Hoffmann-La Roche AG v. Relish Enterprises*, WIPO Case No. [D2007-1629](#)). Such happens to be the case here. The disputed domain name incorporates the Complainant’s RUBRIK trademark in its entirety and the addition of the word “my” does not prevent the trademark from being clearly recognizable in the disputed domain name.

The applicable generic Top-Level Domain (“gTLD”), in the present case “.com”, is usually disregarded under the confusing similarity test and the addition of the term “my” does not prevent a find of confusing similarity (see, among others: *Playboy Enterprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#); *Inter-IKEA Systems B.V. v. Evezon Co. Ltd*, WIPO Case No. [D2000-0437](#); *Dell Computer Corporation v. MTO C.A. and Diabetes Education Long Life*, WIPO Case No. [D2002-0363](#)).

As a result, the Panel considers paragraph 4(a)(i) of the Policy to be satisfied.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant has to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

As the panel stated in *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#), demonstrating that the respondent has no rights or legitimate interests in the domain name “would require complainant to prove a negative, a difficult, if not impossible, task”. Thus, in that decision, the panel opined that “[w]here a complainant has asserted that the respondent has no rights or legitimate interests in respect of the domain name, it is incumbent upon the respondent to come forward with concrete evidence rebutting this assertion”.

Following that decision, subsequent UDRP panels developed a consensus view that it is deemed sufficient for a complainant to make a *prima facie* case that the respondent lacks rights or legitimate interests in a domain name. Once a *prima facie* case has been made, the burden of production shifts to the respondent to demonstrate its rights or legitimate interests. If it fails to do so, the complainant is deemed to have satisfied to paragraph 4(a)(ii) of the Policy (see, e.g., section 2.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

In the present case, the Complainant has rights in the RUBRIK trademark. The Complainant has no business or other relationship with the Respondent. The Complainant thus has made a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain name.

Considering the fact that the Respondent is neither commonly known by the disputed domain name, nor has made a legitimate noncommercial or fair use of the disputed domain name, and that the Respondent is in default, the Panel finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name. Moreover, none of the varied uses to which the redirecting disputed domain name has been put (e.g., pay-per-click links, pornographic content, or malware distribution) can confer rights or legitimate interests upon the Respondent. The construction of the disputed domain name carries a risk of implied affiliation to the complainant, contrary to the fact, which cannot constitute fair use, particularly given the illegal use of the disputed domain name or the likely remuneration the Respondent received from the disputed domain name's redirections

Consequently, in light of the above, the Panel considers paragraph 4(a)(ii) of the Policy to be fulfilled.

C. Registered and Used in Bad Faith

For a complaint to succeed, a panel must be satisfied that a domain name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)).

In the present case, the Complainant is the owner of several RUBRIK trademarks. Taking into account the fact that the Respondent registered the disputed domain name so as to betray users who would mistype their Rubrik customer URL “.my.rubrik.com” by typing the disputed domain name instead, there is no doubt in the Panel's opinion that the Respondent was well aware of the Complainant's RUBRIK trademark when it registered the disputed domain name.

The different uses made of the disputed domain name by the Respondent overtime clearly amount to a bad faith usage within the meaning of the Policy:

First, panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution as in the present case (section 3.4 of [WIPO Overview 3.0](#)).

Second, and as described in section 3.5 of [WIPO Overview 3.0](#): “Particularly with respect to “automatically” generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith”.

Third, by offering to sell the disputed domain name for a price up to USD 2,888, the Respondent has clearly registered it “primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name,” further establishing bad faith under paragraph 4(b)(i) of the Policy.

Fourth, it is well established that using another’s mark to attract Internet users to a pornographic website constitutes bad faith use of the domain name (WIPO Case No. [D2005-0755](#), *Six Continents Hotels, Inc. v. CredoNIC.com / Domain For Sale*; WIPO Case No. [D2011-1092](#), *Verizon Trademark Services LLC v. clpik-studio.com Pawel Tykwinski*; WIPO Case No. [D2005-1165](#), *GAP (Apparel), LLC v. Cher Fang Lim*; WIPO Case No. [D2015-1053](#), *Bakeca S.P.A., Time for Now Limited v. Constantina-Geanina Panainte, Cristian-Anton Vasile*).

Finally, the Respondent has been involved in numerous domain name disputes and lost, which indicates a pattern of domain name registrations abusive of third party trademarks further supporting a finding of bad faith on the part of the Respondent.

Consequently, the Panel finds that the disputed domain name has been registered and is being used in bad faith under the 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 <myrubrik.com> be transferred to the Complainant.

/Philippe Gilliéron/

Philippe Gilliéron

Sole Panelist

Date: December 29, 2022