

ADMINISTRATIVE PANEL DECISION

Appen Limited v. Beverly Blake
Case No. D2023-0830

1. The Parties

The Complainant is Appen Limited, Australia, represented by Greenberg Traurig, LLP, United States of America (“United States” or “US”).

The Respondent is Beverly Blake, United States.

2. The Domain Name and Registrar

The disputed domain name <appencompany.com> (the “Disputed Domain Name”) is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 23, 2023. On February 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 24, 2023, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 27, 2023, 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 February 28, 2023.

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 March 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 23, 2023.

The Center appointed Michael D. Cover as the sole panelist in this matter on April 11, 2023. 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 headquartered in New South Wales, Australia and provides or improves data used for the development of machine learning and artificial intelligence products. Founded in 1996, the Complainant uses crowdsourcing to collect and improve a wide variety of data types, including speech and natural language data, image and video data, text and alphanumeric data and relevance data to improve search and social media engines. The Complainant has offices around the world, including in the US, China, Philippines, United Kingdom, Ireland, and Japan.

The Complainant uses and has used for several decades the APPEN trademark in connection with software and software-related services. The Complainant also owns and operates the domain name <appen.com>, where the Complainant's official website is hosted. The Complainant owns the APPEN trademark, which enjoys protection in many countries including in the United States, where the Respondent is reportedly located.

The Complainant is, *inter alia*, the owner of United States Trademark APPEN registration No. 5538406, registered on August 14, 2018, and filed on June 20, 2017, and a series of APPEN trademarks registered around the world, including in Australia, as set out in Annex 7 to the Complaint.

The Disputed Domain Name resolved to a website very similar to the Complainant's official website, and where the Complainant's APPEN trademark was also displayed.

The Disputed Domain Name was registered on September 14, 2022.

5. Parties' Contentions

A. Complainant

Identical or Confusingly Similar

The Complainant sets out its registrations of its APPEN trademark and also the extensive use of that trademark that has taken place over the past 25 years.

The Complainant then states that the Disputed Domain Name incorporates its APPEN trademark in full, changing the trademark only by adding the generic term "company" and the generic Top-Level Domain ("gTLD") ".com" and notes that numerous panel decisions have found that the addition of generic terms and a gTLD fails to produce a domain name distinct from the Complainant's trademark. In particular, notes the Complainant, the fact that a domain name wholly incorporates a complainant's registered mark is sufficient to establish confusing similarity for the purpose of the Policy, despite the addition of other words to such marks. The Complainant cites in support *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

The Complainant concludes that, pursuant to paragraph 4(a)(i) of the Policy, the Disputed Domain Name is confusingly similar to the Complainant's APPEN trademark.

Rights or Legitimate Interests

The Complainant submits that, long after the Complainant established rights in its APPEN trademark, the Respondent registered the Disputed Domain Name, which the Complainant has submitted is confusingly similar to that trademark. The Complainant goes on to submit that the Respondent is not commonly-known

by the Disputed Domain Name, has not used or prepared to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services, and has not been authorized, licensed or otherwise permitted to register and/or use the Disputed Domain Name and that the Respondent clearly lacks rights to and legitimate interests in the Disputed Domain Name pursuant to Policy 4(a)(ii) and 4(c).

The Complainant continues that the Respondent has never 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, says the Complainant, the Respondent is using the Disputed Domain Name to divert Internet traffic to a website that is substantially a copy of the Complainant's website that prominently displays the Complainant APPEN trademark and pretends to be the Complainant, which the Complainant describes as a "Phishing Website". The Complainant noted that this website also displays a VoIP telephone number, which purports to the number to call the Complainant, says the Complainant.

The Complainant submits that numerous panels have concluded that the use of a domain name to impersonate a complainant in furtherance of fraud establishes that respondents have no legitimate interests in disputed domain names. The Complainant submits that the Panel is constrained to conclude that the Respondent is not commonly known by the Disputed Domain Name, as the originally-identified registrant was a privacy shield, which should lead the Panel to conclude that the Complainant lacks rights and legitimate interest in the Disputed Domain Name.

The Complainant states that the Complainant has not authorized, licensed or consented to the Respondent's registration and use of a domain name incorporating the Complainant's APPEN trademark. The Complainant also states that, to the Complainant's knowledge, there are no prior trademark applications or registrations in the name of the Respondent for any trademark incorporating the Complainant's trademark anywhere in the world.

The Complainant concludes that, based on the foregoing, it is obvious that the Respondent lacks rights or legitimate interests in the Disputed Domain Name within the meaning of the Policy, paragraph 4(a)(ii).

Registered and Used in Bad Faith

The Complainant submits that, as the facts set forth above demonstrate, the Respondent registered and is using the Disputed Domain Name in bad faith.

The Complainant states that the Disputed Domain Name has been used to host a website passing itself off as the Complainant's Official website, which at worst, says the Complainant, is used to steal consumers' personal or company information or, at best, simply defrauds consumers. The Complainant submits that such activities fall squarely into the explicit example of bad faith registration and use found in the Policy, paragraph 4(b)(iv).

The Complainant submits that the use of the Disputed Domain Name by the Respondent to pretend that it is the Complainant or that it is associated with the Complainant brings the case within the provisions of paragraph 4(b)(iii) of the Policy, as it shows that the Registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor, namely the Complainant. The Complainant notes that, as is demonstrated by an active MX ("Mail eXchanger") Record for the Disputed Domain Name, as shown at Annex 12 to the Complaint, there is an indication use for email.

The Complainant continues that, in addition to the Respondent's obvious actual knowledge of the Complainant's trademark, the Respondent had constructive knowledge of the APPEN trademark, because of the Complainant's trademark registration. The Complainant submits that the Respondent was clearly aware of the Complainant's rights in its APPEN trademark, because the Respondent incorporated that trademark into the Disputed Domain Name and forwarded the Disputed Domain Name to a website that impersonated the Complainant.

The Complainant also notes that, as the Respondent used a proxy service to register the Disputed Domain Name, this, of its own, demonstrates the Respondent's bad faith use and registration of the Disputed Domain Name.

The Complainant concludes that the Respondent's conduct undoubtedly constitutes bad faith registration and use of the Disputed Domain Name.

The Remedy requested by the Complainant

The Complainant requests that, in accordance with the Policy, paragraph 4(i), for the reasons set out in the Complaint, the Panel decides that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

The Complainant must establish on the balance of probabilities that the Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights; that the Respondent has no rights or legitimate interests in the Disputed Domain Name; and that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds and decides that the Complainant has established registered rights in its APPEN trademark.

The Disputed Domain Name incorporates the Complainant's APPEN trademark in full and, in assessing confusing similarity, it is well established that the addition of other terms does not prevent a finding of confusing similarity. It is also well-established that the addition of the gTLD, as ".com", is viewed as a standard registration requirement and, accordingly, is to be disregarded under the first element of the Policy.

The Panel therefore finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark APPEN, in which the Complainant has registered rights, and that the provisions of the Policy, paragraph 4(a)(i) have been met.

B. Rights or Legitimate Interests

The Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and that the provisions of paragraph 4(a)(ii) of the Policy have been met. The Panel accepts that the Respondent has not been authorized, licensed or otherwise permitted by the Complainant to register or use the Complainant's APPEN trademark as part of the Disputed Domain Name or otherwise.

The Complainant has established a *prime facie* case, to which no response has been filed, that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not, before any notice to the Respondent of the dispute, made use or demonstrable preparations to use the Disputed Domain Name or a name corresponding to it in connection with a *bona fide* offering of goods or services nor has the Respondent been commonly-known by the Disputed Domain Name nor has the Respondent made noncommercial gain to misleadingly divert consumers or to tarnish the trademark at issue. Such use has taken place of the Disputed Domain Name, as already set out, involves the Disputed Domain Name resolving to a website, which is very similar to the Complainant's website and offers similar services, further underscoring the risk of implied affiliation caused by the composition of the Disputed Domain Name. This does not constitute a *bona fide* offering of goods or services.

The Panel therefore finds the Respondent has no rights or legitimate interests in the Disputed Domain Name and the provisions of paragraph 4(a)(ii) of the Policy have been met.

C. Registered and Used in Bad Faith

The Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. It is a reasonable inference that the Respondent knew of the Complainant and its well-known APPEN trademark at the time when the Respondent registered the Disputed Domain Name and that the Respondent can have had no reason to register the Disputed Domain Name other than for the significance of the APPEN element, which is the dominant part of the Disputed Domain Name. The Panel's finding is reinforced given that the registration and use of the APPEN trademark significantly predate the registration of the Disputed Domain Name and the Disputed Domain Name was used to host a website impersonating the Complainant.

With regard to the use of the Disputed Domain Name, this has been used to resolve to a website which features the Complainant's APPEN trademark and is similar to the website of the Complainant. In addition, the Respondent has failed to use the opportunity to file a Response to the Complaint and, in particular, to file any evidence of good faith use and had sought to conceal his identity.

The Panel accordingly finds that the Respondent has registered and is using the Disputed Domain Name in bad faith and that the provision of the Policy, paragraph 4(a)(iii) been met.

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 <appencompany.com> be transferred to the Complainant.

/Michael D. Cover/

Michael D. Cover

Sole Panelist

Date: April 17, 2023