

ADMINISTRATIVE PANEL DECISION

Atria Senior Living, Inc. v. li jiang
Case No. D2023-1320

1. The Parties

The Complainant is Atria Senior Living, Inc., United States of America (“U.S.”), represented by Gray Ice Higdon, U.S.

The Respondent is li jiang, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 27, 2023. On March 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 20, 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 (Not Disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 21, 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 April 26, 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 April 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 9, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on June 14, 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 a corporation organized under the laws of the U.S. offering retirement and senior health care services. The Complainant has marketed and promoted its services under the name "Atria" since as early as 1996. The Complainant owns word and figurative trademarks for or containing ATRIA ("the Complainant's Trademark") in the U.S.

The relevant trademark registrations include, *inter alia*, U.S. Trademark Registration No. 2145269 for ATRIA in Class 42 registered on March 17, 1998, U.S. Trademark Registration No. 2367386 for ATRIA LIVING in Class 42 registered on July 18, 2000, U.S. Trademark Registration No. 3069007 for  in Class 43 registered on March 14, 2006, U.S. Trademark Registration No. 4356514 for ATRIA in Classes 35, 36, 39, 41, 43 and 45 registered on June 25, 2013, and U.S. Trademark Registration No. 4356510 for ATRIA SENIOR LIVING in Classes 35, 36, 39, 41, 43 and 45 registered on June 25, 2013.

The Complainant's Trademark is also fully incorporated in the Complainant's domain name <atriaseniorliving.com> (the "Complainant's Domain Name"), which resolves to the Complainant's website at "www.atriaseniorliving.com".

The Disputed Domain Name was registered on September 19, 2022, which is over 20 years after the Complainant first registered the Complainant's Trademark. The Disputed Domain Name resolves to a parked page comprising pay-per-click ("PPC") advertising links to websites of other senior living facility providers who are in direct competition with the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant's primary contentions can be summarized as follows:

- (a) The Disputed Domain Name is identical or confusingly similar to the Complainant's Trademark. The Complainant's Trademark is reproduced in its entirety in the Disputed Domain Name. The Disputed Domain Name is merely a minor misspelling of the Complainant's trademark registration for ATRIA SENIOR LIVING and the Complainant's Domain Name.
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has no right to use the Complainant's Trademark as part of a domain name or otherwise. The PPC links do not represent a *bona fide* offering of goods or services.
- (c) Both the Respondent's registration and use of the Disputed Domain Name establish his bad faith. Given the goodwill and reputation of the Complainant's Trademark, the Respondent must have been fully aware of the existence of the Complainant's rights in the Complainant's Trademark when the Respondent registered and used the Disputed Domain Name. The Respondent's use of the Disputed Domain Name does not represent a *bona fide* offering where PPC links on the Respondent's website compete with or capitalize on the reputation and goodwill of the Complainant's Trademark or otherwise mislead Internet users. Therefore, the Respondent has registered and used the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations such as those listed in Section 4.

The Disputed Domain Name involves a misspelling of the Complainant's trademark registration for ATRIA SENIOR LIVING by removing the final letter "i". This is an obvious and intentional misspelling. In any case, the Complainant's Trademark is wholly incorporated in the Disputed Domain Name. The Disputed Domain Name contains a sufficiently recognizable aspect of the Complainant's Trademark and amounts to typo-squatting. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Moreover, it is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the addition of a descriptive, geographical, pejorative, or meaningless term would not prevent a finding of confusing similarity under the first element. See section 1.8 of the [WIPO Overview 3.0](#). The Panel, therefore, finds that the mere addition of "seniorlivng" to the Disputed Domain Name does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark ATRIA. Furthermore, it is well established that the generic Top-Level Domain ("gTLD"), ".com" in this case, may be disregarded. See section 1.11 of the [WIPO Overview 3.0](#).

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent, which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of producing evidence demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent did not submit a Response. The fact that the Respondent did not submit a Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAJM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Names by demonstrating any of the following:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or name corresponding to the Disputed Domain Name, is in connection with a *bona fide* offering of goods or services. The PPC links at issue do not represent a *bona fide* offering since such links compete with or capitalize on the reputation and goodwill of the Complainant's Trademark or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

No evidence has been provided to show that the Respondent has trademark rights corresponding to the Disputed Domain Name or that the Respondent has become known by the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety and is almost identical to the Complainant's trademark registration for ATRIA SENIOR LIVING. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "Atria Senior Living" relate to the Complainant's services and/or third party websites providing information relating to the Complainant's services. Therefore, the Panel agrees with the Complainant that the Respondent must have been aware of the Complainant and its rights in the Complainant's Trademark when registering and using the Disputed Domain Name.

In addition, the Panel finds that the following factors further support a finding that the Disputed Domain Name was registered and has been used by the Respondent in bad faith:

- (i) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name is confusingly similar to the Complainant's Trademark and the Disputed Domain Name would be identical to the Complainant's Domain Name if not for the misspelling. It can be inferred that the Respondent used the Disputed Domain Name to earn click through revenue from the misdirection of Internet users to the Respondent's website caused by the confusing similarity of Disputed Domain Name to the Complainant's Trademark (see *Société Louis Delhaize Financière et de Participation (DELFI PAR) v. Privacy service provided by Withheld for Privacy ehf / Vallee Virginie*, WIPO Case No. [D2021-4126](#)). Also, as discussed above, the Respondent lacks rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)).

- (ii) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of his actual or contemplated good faith use of the Disputed Domain Name.

In the circumstances, the Panel finds that the Respondent registered and is using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

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 <atriaseniorlivng.com> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: June 28, 2023