

ADMINISTRATIVE PANEL DECISION

Carbon Health Technologies, Inc. v. Micah Theard Case No. D2023-1345

1. The Parties

Complainant is Carbon Health Technologies, Inc., United States of America (“United States”), internally represented, United States.

Respondent is Micah Theard, United States.

2. The Domain Name and Registrar

The disputed domain name <carbonhealths.com> (the “Domain Name”) is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 28, 2023. On March 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 4, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email to Complainant on April 11, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on April 18, 2023.

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 Respondent of the Complaint, and the proceedings commenced on April 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 11, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on May 16, 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

Since December 2018, Complainant has offered health care and medical services under the service mark CARBON HEALTH. According to Complainant's website, Complainant has more than 50 locations in the United States.

Complainant filed a trademark application with the United States Patent and Trademark Office ("USPTO") on May 3, 2021 for the word mark CARBON HEALTH, USPTO Serial No. 90688243. It does not appear that the mark has yet been registered. Attached to the application is an April 19, 2021 screenshot of Complainant's website (located at <carbonhealth.com>), which website is a well-developed commercial site describing and offering Complainant's various health care and medical services. These services include Primary Care, Urgent Care, and Virtual Care.

Complainant asserts that its CARBON HEALTH is "well-known," but Complainant offers very little support for this claim. Complainant has a social media presence (Instagram, Facebook, Twitter, LinkedIn). The Panel visited Complainant's Facebook page and observed that Complainant's Facebook page has approximately 3,300 followers.

The Domain Name was registered on September 25, 2021. The Domain Name resolves to a purportedly commercial website, described by Complainant as "eerily similar" to Complainant's website. There are several similarities between the sites, including general content (related to the provision of health care and medical services) and color scheme.

According to Complainant, the site has a fictitious telephone number (123.456.7890). Complainant also asserts that Respondent's site invites users to sign in, thus permitting Respondent to obtain personal information from unwitting people who had been seeking Complainant's services.

Respondent has not denied any of the foregoing allegations.

5. Parties' Contentions

A. Complainant

Complainant contends that it has established each of the three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions. On May 17, 2023, Respondent sent an email to the Center stating, "We have decided to take our site down."

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and

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

A. Identical or Confusingly Similar

The Panel concludes that Complainant has common law rights in the trademark CARBON HEALTH through use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The addition of the pluralizing “s” does not overcome the fact that the entirety of the mark – CARBON HEALTH – is clearly recognizable within the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not come forward in this proceeding to articulate any possible *bona fides* vis-à-vis the Domain Name. The undisputed record shows that Respondent registered a Domain Name very similar to Complainant’s mark CARBON HEALTH, and used that Domain Name to set up a purported commercial that largely mimics Complainant’s site and purports to offer similar services. Because the word “carbon” is not typically associated with health and medical services, Complainant’s CARBON HEALTH enjoys a measure of inherent distinctiveness as an arbitrary mark. As such, the Panel finds it more likely than not that Respondent was aware of Complainant’s mark when he registered the Domain Name.

Respondent does not dispute the allegations that his site bears a fictitious phone number and seeks to obtain personal information from unwitting customers looking to secure Complainant’s services.

Such use of the Domain Name is not legitimate.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation”, are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or

- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith within the meaning of the above-quoted Policy paragraph 4(b)(iv). The Panel incorporates here its discussion above in the "Rights or Legitimate Interests" section. Again, the undisputed record indicates that Respondent more likely than not had Complainant's distinctive mark in mind when registering the Domain Name, and that Respondent used the Domain Name to set up a purported commercial site with a view to duping consumers seeking Complainant's site.

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Name <carbonhealth.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: May 18, 2023