

ADMINISTRATIVE PANEL DECISION

Elara Caring v. Alicia Estus

Case No. D2023-1762

1. The Parties

The Complainant is Elara Caring, United States of America, represented by Soteria LLC, United States of America (“United States”).

The Respondent is Alicia Estus, United States.

2. The Domain Name and Registrar

The disputed domain name <elaracaringhealthcare.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2023. On April 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 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 April 24, 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 25, 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 May 19, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on May 25, 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 in the business of providing home health care and related services. The Complainant relies on the trademark ELARA which was registered in the United States (Registration No. 6003282, registered on March 3, 2020). The trademark is registered by BW Homecare Holdings, LLC. The Complainant submitted evidence showing that BW Homecare Holdings LLC is doing business as Elara Caring. According to the Whois records, the disputed domain name was registered on February 2, 2023. The Respondent has not used the disputed domain name to establish an active web page. The Complainant has furnished evidence including a “Notice of Data Security Incident” that allegedly describes the disputed domain name’s involvement in an email phishing scheme.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or 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. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the ELARA mark by providing evidence of its trademark registration.

The disputed domain name incorporates the ELARA mark in its entirety with the terms “caring”, “health”, and “care”, which do not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s ELARA mark. See [WIPO Overview 3.0](#), section 1.8. The ELARA mark remains recognizable for a showing of confusing similarity under the Policy.

The Panel finds that the Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed

domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts that: (1) the Respondent is neither affiliated with nor authorized by the Complainant to register or use the ELARA trademark, (2) the Respondent has neither used the disputed domain name nor provided any proof of preparations for a *bona fide* offering of goods or services, as any attempts to visit the website does not resolve to a valid website, and (3) the Respondent has not been known by the disputed domain name. While the Complainant claims that the disputed domain name was involved in an email phishing scheme, no evidence has been provided actually demonstrating the disputed domain name's involvement in such a scheme beyond a general "Notice of Data Security Incident" report that does not name the disputed domain name. While the Panel is unwilling to accept unsubstantiated conclusory statements, the Panel notes that if the disputed domain name was used for such phishing purposes, such use could never confer rights or legitimate interests upon the Respondent. Section 2.13 of the [WIPO Overview 3.0](#).

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor. Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use.

The Panel finds it more likely than not that the Respondent knew about and targeted the Complainant when the Respondent registered the disputed domain name. This is apparent from the inclusion of the words "caring", "health", and "care" within the disputed domain name – words that particularly relate to the services the Complainant provides. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name.

The circumstances also demonstrate bad faith use of the disputed domain name in terms of the Policy. Where a disputed domain name is connected with another's name and products, its very use by someone with no connection with the products suggests opportunistic bad faith. See, *Parfums Christian Dior v. Javier Garcia Quintas*, WIPO Case No. [D2000-0226](#). Furthermore, from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank page) would not prevent a finding of bad faith under the doctrine of passive holding; see section 3.3 of [WIPO Overview 3.0](#). Here, along with the totality of the circumstances mentioned above that support a finding of bad faith, the Panel takes further note that the Respondent has not provided a Response and utilized a privacy service to mask its details on the publicly-available Whois.

Accordingly, the Panel finds that the Complainant has established this third element under 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 <elaracaringhealthcare.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: June 17, 2023