

ADMINISTRATIVE PANEL DECISION

Canva Pty Ltd v. Shadab Ansari

Case No. D2023-1941

1. The Parties

Complainant is Canva Pty Ltd, Australia, represented by SafeNames Ltd, United Kingdom (“UK”).

Respondent is Shadab Ansari, India.

2. The Domain Name and Registrar

The disputed domain name <canvaprofree.xyz> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 28, 2023. On May 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 1, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on May 5, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 9, 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 Respondent of the Complaint, and the proceedings commenced on May 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 16, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on June 21, 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

Complainant is a company organized under the laws of the UK that is active in the graphic design industry.

Complainant has provided evidence that it is the registered owner of various trademarks relating to its company name and brand CANVA, including, but not limited, to the following:

- word mark CANVA, United States Patent and Trademark Office (USPTO), registration number: 4,316,655, registration date: April 9, 2013, status: active;
- word mark CANVA, International Trademark, registration number: 1204604, registration date: October 1, 2013, status: active.

Moreover, Complainant has demonstrated to own various domain names relating to its CANVA trademark, *inter alia*, the domain name <canva.com> which resolves to Complainant's main website at "www.canva.com", promoting Complainant's graphic design products and related services worldwide, including its paid-for tool called "Canva Pro".

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of India who registered the disputed domain name on June 8, 2022. By the time of the rendering of this decision, the disputed domain name resolves to a website at "www.canvaprofree.xyz" which is headed "The Recipe Master" and offers links to a variety of food recipes. Complainant, however, has demonstrated that, at some point before the filing of the Complaint (e.g. on September 1, 2022), the disputed domain name resolved to a website at "www.canvaprofree.xyz", which prominently displayed Complainant's official CANVA logo and purported to provide free access to Complainant's "Canva Pro" tool.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that it was founded in 2012 and that it has meanwhile more than 10 million active users per month with customers across 190 countries worldwide, so that Complainant's CANVA trademark has achieved significant reputation and is well-known around the world.

Complainant submits that the disputed domain name is confusingly similar to Complainant's CANVA trademark as it incorporates the latter in full, only followed by the terms "pro" and "free". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent is not connected to or affiliated with Complainant and has not received license or consent to use Complainant's CANVA trademark in any way, (2) Respondent is not known, nor has it ever been known, by Complainant's distinctive CANVA trademark and apparently has not registered any trademarks for "canva", "canvaprofee" or anything similar, and (3) the disputed domain name has been used to resolve to a website which previously brandished Complainant's CANVA logo and purported to provide free access to Complainant's "Canva Pro" offering. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's earliest CANVA trademark predates the registration of the disputed domain name by more than 10 years, (2) Complainant's CANVA trademark has meanwhile accrued substantial goodwill and international recognition, (3) Respondent has sought to capitalize on Complainant's CANVA offerings by directing users to a website which brandished Complainant's CANVA logo and purported to provide free access to Complainant's paid-for "Canva Pro" offering, and (4) Complainant sent a cease and desist letter to Respondent in September 2022, to which it did not receive any response.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's CANVA trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7. Moreover, the applicable Top Level Domain ("TLD") in the disputed domain name (here ".xyz") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11.1).

Based on the available record, the Panel finds Complainant has shown rights in respect of the CANVA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the CANVA trademark is reproduced within the disputed domain name, added only by the terms "pro" and "free". Accordingly, the disputed domain name is confusingly similar to the CANVA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here "pro" and "free") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the CANVA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or

legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

before any notice to Respondent of the dispute, Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

Respondent is not 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 CANVA trademark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

the record contains no other factors demonstrating rights or legitimate interests of Respondent in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with Complainant's CANVA trademark 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. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

In the present case, the Panel particularly notes that Respondent, at some point before the filing of the Complaint (*e.g.* on September 1, 2022), let the disputed domain name resolve to a website at "www.canvaprofree.xyz", which prominently displayed Complainant's official CANVA logo and purported to provide free access to Complainant's paid-for "Canva Pro" tool. Such doing, taken into consideration together with the nature of the disputed domain name (that combines Complainant's undisputed well-known CANVA trademark with the terms "pro" and "free"), clearly demonstrates that Respondent was perfectly aware of Complainant's undisputedly well-known CANVA trademark and the related paid-for "Canva Pro" tool when registering the disputed domain name and started using it in a way clearly taking unfair advantage of said trademark, thus acting in bad faith within the meaning of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <canvaprofree.xyz> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: July 5, 2023