

ADMINISTRATIVE PANEL DECISION

Children’s Miracle Network v. Abayomi Akintade
Case No. D2023-2181

1. The Parties

The Complainant is Children’s Miracle Network, United States of America (“US”), represented by TraskBritt, P.C., US.

The Respondent is Abayomi Akintade, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <supportextra-life.org> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2023. On May 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 19, 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 and contact information in the Complaint (Redacted for privacy). The Center sent an email communication to the Complainant on May 22, 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 May 23, 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 June 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 23, 2023.

The Center appointed Jon Lang as the sole panelist in this matter on July 7, 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 State of Utah of the United States of America. It solicits, collects and deploys donations in furtherance of its mission to raise funds for children's hospitals to alleviate child suffering and to facilitate research into ailments affecting children.

The Complainant has registered the following marks for EXTRA LIFE in the United States of America:

 (Registration No: 6884060, with a Registration date of October 25, 2022) and

EXTRA LIFE (Registration No: 4225327, with a Registration date of October 16, 2012), both in Class 36 (Charitable fundraising), together the EXTRA LIFE mark.

The Complainant widely disseminates materials soliciting donations using the EXTRA LIFE mark for charitable fundraising services throughout North America. It was first used by the Complainant in connection with its charitable fund raising activities from at least as early as June 2008.

The Complainant also owns and uses domain names that include the EXTRA LIFE mark e.g. <extra-life.org>, <extralife.childrensmiracletnetworkhospitals.org>, and <extralifeokc.org>, and owns and operates several social media accounts using its EXTRA LIFE name and mark, including twitter.com/ExtraLife4Kids and facebook.com/ExtraLife4Kids.

The disputed domain name <supportextra-life.org> (hereafter the Domain Name) was registered on January 8, 2023, and appears to have been used to fraudulently impersonate the Complainant so as to solicit payments to someone other than the Complainant. On February 24, 2023, the Complainant received at one of its addresses an email originating from the Domain Name but which purported to be sent on behalf of the Complainant. The email contained the Complainant's physical address and domain name (<extra-life.org>) at the bottom of the signature block. The email did not originate from the Complainant or any of its authorized representatives. The email reproduced the Complainant's EXTRA LIFE mark, purported to originate from, or to have been sent on behalf of the Complainant, and solicits payment.

Formerly, the Domain Name resolved to a landing page which contained only a link to a privacy policy. This appears to have been taken down following a letter of demand having been sent on behalf of the Complainant. The Domain Name now resolves to a blank page.

5. Parties' Contentions

A. Complainant

The following is a summary of the main contentions of the Complainant.

The Domain Name Is Identical or Confusingly Similar to a Trademark in which the Complainant Has Rights

The Domain Name is confusingly similar to the EXTRA LIFE mark.

The Complainant's prior registrations for the EXTRA LIFE mark in the US constitute *prima facie* evidence of the Complainant's rights in, ownership of, and exclusive rights to use the EXTRA LIFE mark, a fanciful and inherently distinctive mark coined by the Complainant and used exclusively to identify the Complainant's services. The Complainant has expended tremendous effort and resources to build goodwill in the EXTRA LIFE mark and, as a result, the EXTRA LIFE mark holds incalculable value. By virtue of the Complainant's longstanding and exclusive use of its EXTRA LIFE mark, including in widely disseminated materials, the EXTRA LIFE mark has become well-recognized and represents goodwill of extraordinary value.

The Complainant only recently became aware of the Domain Name which incorporates and fully reproduces, and is therefore highly similar to the EXTRA LIFE mark. The phrase EXTRA LIFE is the primary signifier in, and dominant element of, the Domain Name.

The incorporation of another's registered trademark in its entirety is sufficient to establish confusing similarity.

The Domain Name only differs from the EXTRA LIFE mark (and the Complainant's <extra-life.org> domain name), by the addition of the word "support" at the beginning of the Domain Name. The word "support" does not distinguish the Domain Name from the Complainant's mark because it is nothing more than a non-distinctive, generic term. In fact, the addition of the word "support" to the Complainant's fanciful mark reinforces the confusing similarity between mark and Domain Name, as the term is strongly related to the Complainant and its activities given the Complainant's regular solicitation of support in the form of donations.

In light of the identity between the dominant portion of the Domain Name and the EXTRA LIFE mark, Internet users and donors are likely to be diverted to the Respondent's site and are likely to be confused as to the source, sponsorship, affiliation or endorsement of the site.

The Respondent Has No Rights or Legitimate Interests in the Domain Name.

The Complainant has prior rights in the EXTRA LIFE mark and has not licensed or otherwise permitted the Respondent to use its mark or to apply for or use any domain name incorporating its mark.

The Respondent has never been known by the Domain Name and appears to have no intellectual property rights in respect thereof.

The Respondent has no rights or legitimate interests in the Domain Name because it has never been used in connection with a *bona fide* offering of goods or services, and is not making a legitimate noncommercial or fair use of the Domain Name because it is intentionally diverting current and potential donors.

The primary use of the Domain Name appears to have been to fraudulently impersonate the Complainant to solicit payments to someone other than the Complainant (presumably the Respondent).

The Respondent holding itself out as the Complainant is *prima facie* evidence that it has no rights or legitimate interests in the Domain Name. That the Domain Name now resolves to a blank webpage (and has for quite some time), further supports the conclusion that the Respondent has no rights or legitimate interests in the Domain Name.

The Domain Name Was Registered, Has Been Used, and Is Currently Being Used in Bad Faith

The Respondent's registration could only have been made in bad faith. In cases involving a fanciful mark, the mere act of registering a domain name incorporating the mark is sufficient to demonstrate the registrant's bad faith, at least when the registrant was unlikely to devise the domain name on its own. The EXTRA LIFE mark is a fanciful term, used in the context of charitable fundraising exclusively for, and distinctive of, the Complainant's

charitable fundraising services. The EXTRA LIFE mark is sufficiently unique such that it is highly unlikely that the Respondent devised the Domain Name without knowledge of the Complainant's mark. This is particularly so when considered in the light of the apparent use the Respondent has made of the Domain Name, namely to impersonate the Complainant.

The deliberate, unauthorized adoption of a trademark raises a presumption that the registration was made in bad faith, and the Respondent's impersonation of the Complainant is indicative of bad faith.

The Respondent was intentionally redirecting Internet traffic away from the Complainant to the Respondent for the Respondent's own commercial gain, in that donors would have incorrectly believed they were supporting the Complainant. This is a further indication of bad faith.

The only known use of the Domain Name demonstrates the Respondent's bad faith at the time of and following registration, through to the present.

The Respondent used a privacy service to register the Domain Name. Use of a privacy service to shield identity and elude enforcement efforts by a legitimate trademark owner is further evidence of a Respondent's bad-faith use and registration of a disputed domain.

The only reasonable conclusion in the circumstances is that the Domain name was registered, has been used, and is currently being used for the purpose of profiting from the goodwill generated by the Complainant, or to sell the Domain Name to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires a complainant to prove that a respondent has registered a domain name which is (i) identical or confusingly similar to a trademark or service mark in which a complainant has rights; and (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and (iii) that the domain name has been registered and is being used in bad faith. A complainant must prove each of these three elements to succeed.

A. Identical or Confusingly Similar

The Complainant clearly has rights in the EXTRA LIFE mark. Ignoring the generic Top-Level Domain ("gTLD") ".org" (as the Panel may do for comparison purposes), the Domain Name comprises the EXTRA LIFE mark (albeit with a hyphen separating the words "extra" and "life"), preceded by the word "support". As the Complainant's mark and Domain Name are not identical, the issue of confusing similarity must be considered. Application of the confusing similarity test under the UDRP typically involves "a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name" (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("the [WIPO Overview 3.0](#)")). Section 1.7 of the [WIPO Overview 3.0](#) goes on to provide "[...] in cases where a domain name incorporates the entirety of a trademark, [...] the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

In the Panel's view, the introduction of a hyphen is of no, or insignificant relevance to the question of whether the entire EXTRA LIFE mark is incorporated in the Domain Name. It is. The word elements of the EXTRA LIFE

mark are separated by a gap, but for technical reasons, a gap cannot be precisely replicated in a domain name string. The closest one could get would be by way of the introduction of a hyphen (as is the case here) or to run the words “extra” and “life” together. In any event, the Domain Name would be recognised as incorporating the EXTRA LIFE mark in its entirety.

The addition of the word “support” does not prevent a finding of confusing similarity. The addition of other terms to a domain name incorporating a trademark, whether descriptive, geographical, pejorative, meaningless or otherwise, would not usually prevent a finding of confusing similarity and here, the addition of the word “support” certainly does not do so (Section 1.8 of the [WIPO Overview 3.0](#)).

The Panel finds that the Domain Name is confusingly similar to the Complainant’s EXTRA LIFE mark for the purposes of the Policy and thus paragraph 4(a)(i) of the Policy has been established.

B. Rights or Legitimate Interests

By its allegations, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name.

Accordingly, the burden of production shifts to the Respondent to come forward with arguments or evidence demonstrating that it does in fact have such rights or legitimate interests. The Respondent has not done so and accordingly, the Panel is entitled to find, given the *prima facie* case made out by the Complainant, that the Respondent indeed lacks rights or legitimate interests in the Domain Name. Despite the lack of any answer to the Complaint however, the Panel is entitled to consider whether there would be anything inappropriate in such a finding.

A respondent can show that it has rights to or legitimate interests in a domain name in various ways even where, as is the case here, it is not licensed or otherwise permitted by the Complainant to register and use the Domain Name in anyway. For instance, it can show that it has been commonly known by the domain name or that it is 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. Here, however, the Respondent is not known by the Domain Name. More significantly, there can be nothing legitimate, noncommercial or fair about the use to which the Domain Name has been put, namely to impersonate the Complainant so as to deceive a third party (and no doubt others) into believing that they were receiving a communication from the Complainant (soliciting financial support for very good causes), when in fact it was being sent by the Respondent, presumably as part of some fraudulent scheme.

A respondent can also show that it is using a domain name in connection with a *bona fide* offering of goods or services. Of course, there can be nothing *bona fide* about the use to which the Domain Name has been put.

The Panel finds that the Complainant has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides a number of non-exclusive scenarios which may evidence a respondent’s bad faith. They include, for instance, a respondent registering a domain name in order to prevent an owner of the trademark or service mark to which it is said to be confusingly similar or identical, from reflecting the mark in question in a corresponding domain name (provided that the respondent has engaged in a pattern of such conduct). A respondent registering a domain name primarily for the purposes of disrupting the business of a competitor is another scenario, as is a respondent intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with a complainant’s mark as to the source, sponsorship, affiliation or endorsement of its website or of products or services on it.

A complainant however does not have to demonstrate a precise literal application of one of the paragraph 4(b) scenarios. They are non-exclusive and illustrative only, and as long as there is evidence demonstrating that a respondent is seeking to take unfair advantage of, or to abuse a complainant's trademark, such behaviour would satisfy the general principle underlying the bad faith requirement of the Policy.

The Respondent has used an email account associated with the Domain Name in an attempt to mislead a third party into believing they were being asked, by the Complainant, to consider making a financial donation for the benefit of unwell children, when in fact they were receiving an email from the Respondent, presumably as part of some fraudulent scheme. There was nothing at all legitimate about the email. It was a fiction. It is clear, particularly given the use of the Complainant's address and website in that e-mail, that the Respondent set out to acquire a domain name to assist it in its impersonation of the Complainant for its own improper ends. Such behaviour clearly takes unfair advantage of the Complainant's rights, and is abusive.

In all the circumstances, the Panel finds that, for the purposes of the Policy, there is evidence of both registration and use of the Domain Name in bad faith.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <supportextra-life.org> be transferred to the Complainant.

/Jon Lang/

Jon Lang

Sole Panelist

Date: July 21, 2023