

ADMINISTRATIVE PANEL DECISION

Yoga4Cancer LLC v. Aqsa Jamil
Case No. D2023-2536

1. The Parties

The Complainant is Yoga4Cancer LLC, United States of America (“United States”), represented by Hunton Andrews Kurth LLP, United States.

The Respondent is Aqsa Jamil, Pakistan.

2. The Domain Name and Registrar

The disputed domain name, <y4c.com>, is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2023. On June 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 the Respondent of the Complaint, and the proceedings commenced on June 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 14, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on July 18, 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 not-for-profit organization located in the United States. It offers an evidence-informed oncology yoga method to address physical and emotional needs arising from cancer and cancer treatment.

The Complainant is the owner of United States trademark registration number 6068852 for the word mark YOGA4CANCER, registered on June 2, 2020.

The disputed domain name was created on July 24, 2003.

The Complainant is a previous registrant of the disputed domain name. According to the Internet Archive, the Complainant used the disputed domain name from at least September 13, 2012 for the purpose of a website at "www.y4c.com" which made prominent use of the branding "Y4C (Yoga for Cancer)".

The disputed domain name currently resolves to a website at "www.moboax.com" which offers information about telephone SIM cards.

5. Parties' Contentions

A. Complainant

The Complainant submits that it engaged the Respondent in about January 2022 to redesign and develop its website at "www.y4c.com". The Complainant states that it terminated its contract with the Respondent as agreed milestones had not been met, whereupon the Respondent changed the payment provisions on the website to redirect payments intended for the Complainant to a company named Digital Solutions. The Complainant submits that, following communications with the Respondent's website host, the Respondent began instead to redirect the disputed domain name to the Moboax website, selling SIM cards.

In connection with its above submissions, the Complainant exhibits correspondence with an individual named Shawaiz Qayyum, who is described as IT Project Manager, Digital Setups.

The Complainant submits that the disputed domain name is identical or confusingly similar to its registered trademark YOGA4CANCER. It contends that the term Y4C is an abbreviation of that trademark and that the Complainant has in any event been known by the abbreviation Y4C.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that the Respondent was given access to the disputed domain name solely for the purpose of web design services and was expressly directed to register it in the Complainant's name. The Complainant submits that, upon a contractual dispute arising, the Respondent "hijacked" the website and fraudulently changed its payment provisions so that donations intended for the Complainant would go instead to Digital Solutions. It states that the current website offering SIM cards constitutes a similar fraudulent scheme.

The Complainant submits, for similar reasons, that the disputed domain name was both registered and has been used in bad faith, namely, to trick Internet users into making payments for the benefit of the Respondent.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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.

A. Preliminary Matter

The registrar-disclosed registrant in this proceeding, Aqsa Jamil, does not appear to be the same party that the Complainant refers to as the Respondent, namely Shawaiz Qayyum, IT Project Manager, Digital Setups. However, the Panel has no reason to believe that any party other than the registrar-disclosed registrant controls the disputed domain name or the website to which it currently resolves, nor has the registrar-disclosed registrant nor any other party come forward to submit that some other party is in fact the beneficial holder of the disputed domain name. The Panel finds in the circumstances that the registrar-disclosed registrant is the proper Respondent in this proceeding. The Panel finds further, on the balance of probabilities, that the registrar-disclosed registrant is likely to be either an alias for, or an authorized representative of, the party identified by the Complainant.

B. Identical or Confusingly Similar

Based on the evidence available to the Panel, the Panel finds that the Complainant has used the abbreviation Y4C on its website for a period of several years – not to mention its initial registration (and use) of the disputed domain name bearing such acronym a decade ago – to represent its organization Yoga for Cancer. The Panel moreover notes that the use of the disputed domain name to misdirect payments intended for the Complainant (see findings below) would only be possible to the extent there was sufficient source-identifying capacity. The Panel finds in these circumstances that for purposes of the present decision the Complainant would have obtained common law rights (in the nature of unregistered trademark rights) in the mark Y4C, in addition to its registered trademark rights in the mark YOGA4CANCER. The disputed domain name is identical to the mark Y4C and the Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

C. Rights or Legitimate Interests

The Panel accepts the Complainant's evidence, which the Respondent does not dispute, that the Respondent was engaged by the Complainant to provide web design and development services and was given instructions to ensure the disputed domain name was registered in the name of the Complainant (the Respondent even confirming that the Complainant "will keep this account") but instead seized control of the disputed domain name. The Panel finds further that, following a contractual dispute between the Parties, the Respondent used that control of the disputed domain name and altered the payment provisions on the Complainant's website so that donations intended for the Complainant would be directed instead to a recipient connected with the Respondent. Whatever the merits of the contractual dispute between the Parties (upon which the Panel expresses no opinion) it cannot represent a legitimate use of the disputed domain name for the Respondent to use it misleadingly to redirect payments intended for the Complainant to another party. The Respondent having offered no other evidence of any rights or legitimate interests, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

D. Registered and Used in Bad Faith

For similar reasons as discussed above, the Panel finds that the disputed domain name was both registered

and has been used in bad faith. The Panel accepts that the Complainant's evidence that the Respondent was directed to register the disputed domain name in the Complainant's name and the Panel concludes on balance that its registration in the name of the Respondent represented part of the Respondent's scheme to redirect payments intended for the Complainant to itself. The Respondent's use of the disputed domain name misleadingly to redirect such payments represents use of the disputed domain name in bad faith and the Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

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, <y4c.com>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: August 1, 2023