

ADMINISTRATIVE PANEL DECISION

Namecheap, Inc. v. Host Master, 1337 Services LLC
Case No. D2023-2748

1. The Parties

The Complainant is Namecheap, Inc., United States of America (“United States”), represented by Rome LLP., United States.

The Respondent is Host Master, 1337 Services LLC.

2. The Domain Name and Registrar

The disputed domain name <namecheapx.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2023. On June 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 28, 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. The Center sent an email communication to the Complainant on June 29, 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 July 1, 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 July 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 27, 2023.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on August 1, 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 an ICANN-accredited domain name registrar and web hosting company based in Phoenix, Arizona, which was founded in 2000. Since then, the Complainant has grown to become one of the largest domain name registrars in the world, with over 17 million domain names under management.

The Complainant has extensive and exclusive rights to the NAMECHEAP trademark. The Complainant relies in particular on the following trademark registrations in support of its action:

- United States Trademark Registration no. 3,622,358 for NAMECHEAP.COM in class 42 registered on May 19, 2009, first use in commerce on November 9, 2000;
- United States Trademark Registration no. 4,213,990 for NAMECHEAP in classes 35, 39, 42 and 45 registered on September 25, 2012, first use in commerce on November 9, 2000;
- United States device trademark Registration no. 4,620,283 for NAMECHEAP in classes 42 and 45 registered on October 14, 2014, first use in commerce on October 7, 2014;
- Australian Trademark Registration no. 2154148 for NAMECHEAP in classes 35, 39, 42, 45 registered on February 8, 2021;
- European Union Trademark Registration no. 018412308 for NAMECHEAP in classes 35, 42, 45 registered on September 8, 2021;
- United Kingdom Trademark Registration no. UK00003593968 for NAMECHEAP in classes 35, 42, 45 registered on August 13, 2021.

The NAMECHEAP Trademark is also used by the Complainant as its business name and therefore functions as both a trademark and a trade name.

The disputed domain name was created on April 30, 2020. It appears that the Complainant originally discovered the disputed domain name on June 26, 2020. At that time, the disputed domain name was registered with Namesilo. The Complainant contacted Namesilo regarding the disputed domain name and Namesilo promptly suspended the domain, but within the next few days the disputed domain name was reactivated.

The Complainant contacted Namesilo again, and the disputed domain name was suspended again on July 1, 2020. On July 8, 2020, Namesilo informed the Complainant that it had received two emails from a customer named R. Bhatti, who identified himself as the owner of the disputed domain name. The emails appear to threaten retaliation against Namesilo for suspending the disputed domain name. On July 10, 2020, the Complainant sent the cease-and-desist letter to Mr. Bhatti, informing him of the Complainant's rights in the NAMECHEAP Trademark, and that the disputed domain name and the website to which the disputed domain name resolved infringed the Complainant's rights in the NAMECHEAP Trademark and demanding that he immediately cease and desist any use of the NAMECHEAP Trademark. No response to the cease and desist letter followed, and the disputed domain name remained suspended for some time.

The record shows that the disputed domain name was then transferred to the current Registrar. According to the evidence submitted by the Complainant, the disputed domain name has been resolving to a website which impersonates the Complainant's official website.

5. Parties' Contentions

A. Complainant

Identical or Confusingly Similar

The Complainant alleges that the disputed domain name is confusingly similar to the NAMECHEAP trademark which it contains in its entirety with the addition of the letter "x". The addition of the letter "x" after the NAMECHEAP trademark does not detract from the identical or confusing similarity between the disputed domain name and the Complainant's NAMECHEAP trademark.

No rights or legitimate Interests

The Complainant claims that it has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated to the Complainant in any form.

There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks.

The Complainant submits that the disputed domain name was created long after the Complainant adopted and began using, supplying and offering for sale services under the NAMECHEAP trademark and after the Complainant's reputation in the NAMECHEAP trademark was established.

The Complainant further contends that there is no evidence that the Respondent has ever operated any *bona fide* or legitimate business under the disputed domain name, and the Respondent is not making a protected noncommercial or fair use of the disputed domain name. By incorporating the Complainant's NAMECHEAP trademark into the disputed domain name, the Respondent uses it to misdirect or "bait" Internet users seeking the Complainant's services to its own site, where it claims to sell services competing with the Complainant's services.

Registered and used in bad faith

The Complainant contends that the disputed domain name has been registered and is being used in bad faith.

The Complainant claims that, by using the disputed domain name, the Respondent is intentionally attempting to attract for commercial gain Internet users to the Respondent's website under the disputed domain name by creating a likelihood of confusion with the NAMECHEAP trademark to falsely create the impression that the Respondent's website and the services being offered on the Respondent's website under the disputed domain name are actually those of the Complainant or somehow affiliated with the NAMECHEAP branded goods of the Complainant.

According to the Complainant's contentions, the Respondent is also deemed to have constructive knowledge of the Complainant's trademark rights by virtue of the Complainant's federal registrations for the NAMECHEAP trademark.

The Complainant further claims that the Respondent's bad faith use of the disputed domain name is further evidenced by the non-functional contact information provided on the website under the disputed domain name.

The Complainant submits that two days after the Complainant filed its original Complaint on June 27, 2023, the Respondent updated its Contact and Reseller Information. The registrant information identifies the registrant as having the first name of "Host" and the last name "Master". The Complainant submits that this is the fake contact information that is meant to impede the Complainant in ascertaining the Respondent's true identity, providing further evidence that the Respondent is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Considering that the Respondent did not reply to the Complainant's contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules. Under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel “shall draw such inferences therefrom as it considers appropriate”.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the 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.

A. Identical or Confusingly Similar

Under the first element, the Complainant must establish that the disputed domain name is identical, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

According to section 1.1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), the term “trademark or service mark” as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (sometimes referred to as common law) marks.

Ownership of a nationally or regionally registered trademark serves as a *prima facie* evidence that the Complainant has trademark rights for the purposes of standing to file this Complaint. See section 1.2 of [WIPO Overview 3.0](#). The Complainant submitted evidence that the NAMECHEAP trademark enjoys protection under national and regional trademark registrations. Thus, the Panel finds that the Complainant's rights in the NAMECHEAP trademark have been established pursuant to the first element of the Policy.

The disputed domain name consists of the Complainant's NAMECHEAP trademark followed by the letter “x” followed by the generic Top-Level Domain (“gTLD”) “.com”.

Under section 1.7 of the [WIPO Overview 3.0](#), while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Finally, for the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the gTLD, see section 1.11.1 of the [WIPO Overview 3.0](#).

It is the view of the Panel that it is readily apparent that the Complainant's NAMECHEAP trademark is recognizable in the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the NAMECHEAP trademark in which the Complainant has rights.

The first element of paragraph 4(a) of the Policy is therefore satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Based on the Complainant's contentions, the Respondent is not a licensee of, or otherwise affiliated with, the Complainant, and has not been authorized by the Complainant to use its NAMECHEAP trademark.

The Complainant further contends that the Respondent is not commonly known by the disputed domain name and has not made any *bona fide* use – neither commercial nor noncommercial, of the same.

Based on the case records, the Panel finds that there is no evidence that the Respondent has been commonly known by the disputed domain name, and there is no similarity or association between the name of the Respondent and the disputed domain name, which could demonstrate rights or legitimate interests of the Respondent. See, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#).

The Complainant has provided substantial evidence, which have not been rebutted by the Respondent, that the disputed domain name was misappropriated with full knowledge of the Complainant's rights in the NAMECHEAP trademark.

The evidence provided by the Complainant shows that the disputed domain name has been resolving to an active website seemingly impersonating the Complainant using the mark and logo of the Complainant as a masthead mimicking the Complainant's website and taking advantage of the goodwill of the Complainant.

Respectively, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, and has not been using it in connection with a *bona fide* offering of goods or services. Instead, as the evidence submitted by the Complainant establishes, the disputed domain name has been used by the Respondent to mislead users looking for information about the Complainant to visit the Respondent's website, for the Respondent's own commercial gain. See, e.g., *Jeffrey Archer v. Alberta Hotrods tda CELEBRITY 1000*, WIPO Case No. [D2006-0431](#) ("The domain name is used to mislead Internet users looking for Jeffrey Archer to a commercial website for Respondent's benefit. Such use cannot be considered *bona fide*.").

According to section 2.13.1. of the [WIPO Overview 3.0](#) Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.

After a complainant has made a *prima facie* case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

Here, the Respondent has provided no evidence of any rights or legitimate interests in the disputed domain name. In the absence of any evidence rebutting the Complainant's *prima facie* case indicating the

Respondent's lack of rights or legitimate interests in respect of the disputed domain name, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of 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. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt 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 a product or service on [respondent's] website or location".

The disputed domain name has been registered long after the Complainant's trademark has been registered and used.

The website at the disputed domain name appears to be designed to confuse Internet users into thinking that it is part of the Complainant's business or has some affiliation or connection, which it does not have. The unauthorised use of the Complainant's very distinctive NAMECHEAP trademark in the disputed domain name and mimicking of the Complainant's NAMECHEAP logo on the website to which the disputed domain name resolves is obviously intended to attract and confuse Internet users to the Respondent's website and to pass off the Complainant's NAMECHEAP trademark. The Respondent is using the website for a commercial purpose offering services competing with the Complainant's services (See, e.g., *Tiffany and Co. v. Janet White*, WIPO Case No. [D2003-0456](#)).

As a result, the Panel finds that the requirements of paragraph 4(b)(iv) of the Policy are fulfilled and that there is evidence of registration and use of the disputed domain name in bad faith.

This is a case of the Respondent attempting to use the Complainant's distinctive mark in the disputed domain name and on the website to which it resolves, to pass itself off in bad faith as having some connection with the Complainant's business that it does not have. The Panel's view of the Respondent's bad faith is only reinforced by its failure to explain itself or to respond in these proceedings and also by the Complainant's cease-and-desist letter which evidences that the Respondent was put on actual notice of the Complainant's rights in the NAMECHEAP trademark.

In the Panel's view, the use of the disputed domain name for such activity, clearly with a view to commercial gain, amounts to paradigm bad faith registration and use for the purposes of the Policy, paragraph 4(b)(iv).

Accordingly, the Panel 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 <namecheapx.com> be transferred to the Complainant.

/Kateryna Oliinyk/

Kateryna Oliinyk

Sole Panelist

Date: August 17, 2023