

## **ADMINISTRATIVE PANEL DECISION**

Grammarly Inc. v. Polyakov Andrey  
Case No. D2023-2779

### **1. The Parties**

The Complainant is Grammarly Inc., United States of America (“United States”), represented by BrandIT GmbH, Switzerland.

The Respondent is Polyakov Andrey, Ukraine.

### **2. The Domain Name and Registrar**

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 29, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 3, 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 4, 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 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 17, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on August 22, 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 United States company that launched a writing and grammar checking tool under the trademark GRAMMARLY in 2009. The GRAMMARLY tool helps users identify and correct grammar, spelling, punctuation, and other writing errors. It can be used as a browser extension, as a Microsoft Office add-on, or as a standalone mobile application. The tool uses artificial intelligence and natural language processing to provide real-time feedback and suggestions for improving grammar, punctuation, and style. It also includes a plagiarism detector and a thesaurus for synonyms suggestions.

In 2019, the Complainant was named in Fast Company's prestigious "World's Most Innovative Companies" annual list, and in 2021, it was recognized by TrustRadius for its customer support, software features, and was even named the "Most Loved" software offering.

The Complainant is the owner of several trademark registrations for GRAMMARLY, including the following:

- International trademark registration No. 1590638 for GRAMMARLY (word mark), registered on March 5, 2021, in classes 09, 41 and 42;
- European Union trademark registration No. 018663801 for GRAMMARLY (word mark), filed on February 28, 2022, and registered on June 22, 2022, in class 25; and
- United Kingdom trademark registration No. UK00003759837 for GRAMMARLY (word mark), filed on February 28, 2022, and registered on May 20, 2022, in class 25.

The Complainant also owns trademark registration for its G logo, including the European Union trademark registration No. 018663828 for , filed on February 28, 2002 and registered on July 1, 2022, in classes 9, 25, 41 and 42.

The Complainant is also the owner, amongst others, of the domain name <grammarly.com>, which was registered on July 1, 2009, and is used by the Complainant to promote, and enable users to download, its tools under the trademark GRAMMARLY.

The disputed domain name <grammarlyplagiarismchecker.com> was registered on October 6, 2021, and is pointed to a website publishing the Complainant's word and figurative trademarks along with information about the Complainant's GRAMMARLY plagiarism detector and purporting to offer the Complainant's tool for download.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the trademark GRAMMARLY in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the expression "plagiarism checker".

The Complainant underlines that the Respondent intentionally seeks to exploit the Complainant's established trademark, increasing the likelihood of confusion among Internet users who may mistakenly associate the disputed domain name with the Complainant's legitimate services especially considering the Complainant already offers a dedicated plagiarism checking feature through the URL "https://www.grammarly.com/plagiarism-checker".

The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name since i) the disputed domain name was registered long after the Complainant's first trademark registration; ii) the Respondent is not licensed, authorized or affiliated with the Complainant and similarly, has never even been endorsed or sponsored by the Complainant to use its trademarks in any way including

the registration of the disputed domain name; iii) there is no evidence that the Respondent is commonly known by the disputed domain name and, when entering the terms “grammarly”, “plagiarism” and “checker” on the Google search engine, the search results direct users to the Complainant’s website and its related online activities; iv) the disputed domain name resolves to a website which is a copycat version of the Complainant’s official website, which does not amount to a *bona fide* offering of goods or services as the Respondent clearly intends to create confusion among Internet users to create the impression that the Respondent’s website is somewhat affiliated with or endorsed by the Complainant, which it is not.

With reference to the circumstances evidencing bad faith, the Complainant indicates that, considering the prior registration and wide-spread use of the Complainant’s trademark online, it is inconceivable that the Respondent was unaware of the existence of the Complainant when he registered the disputed domain name.

The Complainant also submits that it is very likely that the Respondent registered the disputed domain name intentionally to prevent the Complainant from reflecting its trademark in a corresponding domain name and highlights that the Respondent has been involved in numerous UDRP cases in the past, where the outcome has always been the transfer of the disputed domain names to the respective complainants.

The Complainant further asserts that the Respondent’s use of a privacy service to shield its contact details in the public Whois records is an indication of the Respondent’s bad faith.

As to the use of the disputed domain name, the Complainant contends that, since the Respondent pointed the disputed domain name to a copycat website of the Complainant’s official website, it is self-evident that the Respondent registered and is currently using the disputed domain name in bad faith, with the clear intent to take a free ride on the Complainant’s renown.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Preliminary Procedural Considerations**

Under paragraph 10 of the Rules, the Panel needs to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case, and that the administrative proceeding takes place with due expedition.

The Panel notes that, according to the Whois records, the Respondent is based in Ukraine (though such fact is not possible to verify), which is subject to an international conflict at the date of this Decision that may impact case notification. Therefore, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel is of the view that it should. While according to the present case, there is no evidence that the Written Notice sent via courier may have been successfully delivered to the Respondent’s address most likely due to the incomplete information provided by the Respondent at the time of registering the disputed domain name (only a city name, a country name and a postal code). It appears that the Notification of Complaint by email was instead successfully delivered to the Respondent at his email address as disclosed by the Registrar, to an email address shown in the publicly accessible Whois database.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain names shall be referred to the jurisdiction of the courts at the location of the principal office of the concerned Registrar. In this case, the principal office of the Registrar is in Arizona, the United States.

The Panel notes that the Respondent appears to be capable of controlling the disputed domain name and its content and that, having apparently received notification of the Complaint by email and the privacy email, it would have been able to formulate and file a Response in the administrative proceeding in case he wished to do so.

Moreover, for reasons detailed below, the Panel has no doubts (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith.

The Panel further notes that the Respondent has been found to have registered and used other domain names in bad faith in previous UDRP cases, in which the UDRP panelists specifically decided that it was appropriate for the case to proceed against the Respondent, notwithstanding his Ukraine address, for reasons similar to those indicated above. See, amongst others, *GoTo Technologies USA, Inc. v. Polyakov Andrey*, WIPO Case No. [D2023-0448](#); *Bytedance Ltd. v. Polyakov Andrey*, WIPO Case No. [D2022-3399](#); and *PowerSchool Group LLC, and Schoology, LLC v. Privacy service provided by Withheld for Privacy ehf / Polyakov Andrey*, WIPO Case No. [D2022-2168](#).

The Panel concludes that the Parties have been given a fair opportunity to present their case and, in order to ensure that the administrative proceeding takes place with due expedition, will now proceed to a Decision.

## **6.2. Substantive Issues**

According to paragraph 15(a) of the Rules: “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.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent 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**

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 the Complainant’s 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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Indeed, the Complainant has provided evidence of ownership of valid trademark registrations for GRAMMARLY in many countries.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the terms “plagiarism” and “checker” 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 mark 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 the 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, UDRP 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 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 records, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademark. Moreover, there is no element from which the Panel could infer the Respondent’s rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel finds that the Respondent’s use of the disputed domain name to direct Internet users to a website imitating the look and feel of the Complainant’s official website, publishing the Complainant’s trademarks and purporting to offer the Complainant’s plagiarism checker tool for download without publishing any disclaimer to clarify its lack of relationship with the Complainant, does not amount to *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademarks.

Moreover, the Panel finds that the disputed domain name is misleading. Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

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

## **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that, in view of the prior use of the trademark GRAMMARLY in connection with the Complainant’s online writing and grammar checking tools and of the composition of the disputed domain name, combining the trademark GRAMMARLY with descriptive terms directly referring to the Complainant’s plagiarism checker tool, the Respondent was likely aware of the Complainant’s trademark at the time of registration.

Moreover, considering the disputed domain name resolves to a website featuring the Complainant’s trademarks and purporting to offer the Complainant’s plagiarism checking tool for download, the Respondent clearly intended to target the Complainant and its trademark.

The Panel also finds that, by pointing the disputed domain name to the website described above, imitating the look and feel of the Complainant's official website without providing any disclaimer of non-affiliation with the Complainant, the Respondent intentionally attempted to attract Internet users to his website, by causing a likelihood of confusion with the trademark GRAMMARLY as to the source, sponsorship, affiliation or endorsement of his website according to paragraph 4(b)(iv) of the Policy.

The Complainant has also demonstrated that the Respondent has been involved in at least 3 UDRP procedures, in which panels ordered the transfer of the concerned domain names to the respective complainants, including *GoTo Technologies USA, Inc. v. Polyakov Andrey, supra*; *Bytedance Ltd. v. Polyakov Andrey, supra*; and *PowerSchool Group LLC, and Schoology, LLC v. Privacy service provided by Withheld for Privacy ehf / Polyakov Andrey, supra*. The Respondent has thus engaged into a pattern of registering domain names reproducing trademarks of third parties in order to prevent the owners of the trademarks to reflect them in a corresponding domain name according to paragraph 4(b)(ii) of the Policy. [WIPO Overview 3.0](#), section 3.1.2.

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

## 8. 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, <grammarlyplagiarismchecker.com>, be transferred to the Complainant.

/Luca Barbero/

**Luca Barbero**

Sole Panelist

Date: September 5, 2023