

ADMINISTRATIVE PANEL DECISION

Horizontal Integration, Inc. v. Honey Love, Sotheby's Institute of Art
Case No. D2023-3597

1. The Parties

Complainant is Horizontal Integration, Inc., United States of America ("US"), represented by Fredrikson & Byron, P.A., US.

Respondent is Honey Love, Sotheby's Institute of Art, US.

2. The Domain Names and Registrar

The disputed domain names <horizontaltalents.com> and <horizontaltalent.team> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 25, 2023. On August 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 28, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (John Doe) and contact information in the Complaint. The Center sent an email communication to Complainant on September 1, 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 September 6, 2023.

The Center verified that the Complaint, together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on September 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 4, 2023. Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 5, 2023.

The Center appointed Phillip V. Marano as the sole panelist in this matter on October 12, 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 an international staffing agency which has been offering its services—which specifically include posting job openings and interviewing applicants—since 2003. Complainant has offices in the US, India, and Malaysia. Complainant offers its services through its official <horizontaltalent.com> domain name and website, which was registered since June 1, 2015.

Complainant asserts common law trademark rights in HORIZONTAL TALENT, since 2003. Additionally, Complainant owns the trademark registration HORIZONTAL TALENT in India, with registration no. 4,180,630, registered on May 20, 2019, in Class 35¹. Complainant also has pending intent to use trademark applications for various HORIZONTAL formative trademarks in the US, including an application for HORIZONTAL TALENT (US Ser. No. 88/424,820), filed on May 10, 2019 (disclaiming the term “talent”) (Complainant’s asserted trademarks are collectively referred to herein as the “HORIZONTAL TALENT trademark”).

Respondent registered the disputed domain name <horizontaltalents.com> on August 3, 2023, and the disputed domain name <horizontaltalent.team> on August 7, 2023. The former disputed domain name does not resolve to any content, and the latter was configured to redirect to Complainant’s official website. Respondent used the disputed domain name <horizontaltalent.team> to send emails to, schedule putative interviews with, and send putative interview materials to prospective job applicants.

5. Parties’ Contentions

A. Complainant

Complainant asserts common law rights in the HORIZONTAL TALENTS trademark and has adduced evidence of pending intent to use trademark applications in the US, with earliest priority potentially dating back to the date of filing on May 10, 2019. The disputed domain names are confusingly similar to Complainant’s HORIZONTAL TALENTS trademark, according to Complainant, because each has been used in furtherance of a fake check, phishing, and/or financial scam, resulting in several inquiries to Complainant from individuals who have been defrauded by Respondent.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain names based on: the lack of any relationship between, or authorization from, Complainant and Respondent regarding use the HORIZONTAL TALENT trademarks; and Respondent’s use of the disputed domain names in furtherance of a fake check, phishing, and/or financial scam, whereby the “interviewers’ have told job applicants that they are ‘with the HR team Horizontal Talent.’”

Complainant argues that Respondent has registered and used the disputed domain names in bad faith for numerous reasons, including: Respondent’s use of the disputed domain names and unauthorized use of Complainant’s HORIZONTAL TALENT trademark in connection with fraudulent job postings and a fake check, phishing, and/or financial scam. More specifically, according to Complainant, “[i]n early August 2023,

¹ Even if this listed trademark registration was not included in the Complaint, a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision, such as accessing trademark registration databases. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 4.8. As will be explained below, in the present case, Panel undertook such limited factual research in order to reveal trademark registrations of the Complainant since this is useful information when assessing the case merits.

Complainant was notified that Respondent, using the <horizontaltalents.com> domain, had begun engaging in fraudulent activity whereby Respondent: (i) copied Complainant's name and logos and posted job openings on third party job boards; (ii) solicited individuals to apply to the fraudulent job openings; (iii) sent email correspondence to the job applicants using email addresses under the <horizontaltalents.com> and <horizontaltalent.team> domains; and (iv) conducted interviews with the job applicants purporting to be affiliated with Complainant. For example, in one interview conducted via webchat, [Respondent] falsely represented to a job applicant that he was 'located in St Louis Park, MN, with the HR team Horizontal Talent.' During the interviews, Respondent told the job applicants that they would be required to purchase a list of equipment in order to be 'hired.' One applicant notified Complainant that, after several interviews designed to make the company appear legitimate, Respondent mailed him a check from Respondent's purported client and instructed the applicant to buy equipment from Respondent and reimburse himself with the provided check. Another applicant notified Complainant that Respondent instructed him to purchase USD 1512 of computer equipment via a bitcoin transaction, claiming that Respondent's client would reimburse the applicant after he purchased the equipment. Respondent sent the applicant an invoice for USD 1512 that was purportedly from "Horizontal Talent Vendors & IT." (internal Annex citations omitted).

B. Respondent

Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain names are identical or confusingly similar to a trademark in which Complainant has rights;
- ii. Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- iii. The disputed domain names have been registered and is being used in bad faith.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Complainant submitted evidence that the HORIZONTAL TALENT trademark was applied for in the US with potential priority dating back to the filing date on May 10, 2019. Pending trademark applications alone do not generally establish trademark rights within the meaning of paragraph 4(a)(i) of the Policy, because they have not yet been approved or matured into registrations. [WIPO Overview 3.0](#), section 1.1.4. In addition to the foregoing, the trademark applications cited by Complainant carry potential issues, including (most relevant to this proceeding) disclaimer of the term "talent", assertion of an intent to use basis, and pending final refusals asserting a likelihood of confusion with a registered third-party trademark.

Alternatively, to establish unregistered or common law trademark rights for purposes of the Policy, Complainant must show that its mark has become a distinctive identifier which consumers associate with Complainant's goods and/or services. Specific evidence demonstrating such acquired distinctiveness is required, rather than mere conclusory assertions of common law trademark ownership. Such evidence includes: (i) the duration and nature of use of the mark; (ii) the amount of sales under the mark; (iii) the nature and extent of advertising using the mark; (iv) the degree of actual consumer, public and media recognition; and (v) consumer surveys. In addition, the fact that a respondent has clearly targeted a complainant and their trademark can also support a finding of acquired distinctiveness and common law trademark rights for purposes of the Policy. [WIPO Overview 3.0](#), Section 1.3. See e.g., *Roper Industries, Inc. v. VistaPrint Technologies Ltd.* WIPO Case No. 2014-1828 (Accepting unregistered trademarks for the purpose of the Policy where *inter alia* "[t]he disputed domain name is a close typo-variant of the Complainant's trademark", was "used as the return email address in fraudulent correspondence sent to Complainant, seeking to dupe the Complainant into sending money to a stated bank account", and "Respondent failed to respond to the Complainant" cease and desist correspondence or the complaint). However, in this case, Complainant has not submitted any specific evidence to support common law trademarks rights beyond evidence of its registration of its <horizontaltalent.com> domain name in 2015 and the circumstantial evidence of typosquatting by Respondent to specifically target potential customers of Complainant as part of an illegal phishing and check fraud scheme. While the Respondent's targeting of the Complainant through the HORIZONTAL TALENT trademark may itself demonstrate the recognition of such terms being source identifiers for the Complainant, thus establishing standing under the Policy and for the first element, the Panel need not make such determination given its finding below.

As explained above, a panel may undertake limited factual research into matters of public record where it considers such information useful to assessing the case merits and researching a decision. This includes visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name, consulting historical resources like the Internet Archive, reviewing dictionaries, encyclopedias, or accessing trademark registration or other governmental databases. [WIPO Overview 3.0](#), section 4.8. To wit, it is a matter of public record that Complainant owns a valid and subsisting registration for the HORIZONTAL TALENT trademark in India (Reg. No. 4,180,630) with priority dating back to May 20, 2019. Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Thus, the Panel finds that Complainant's rights in the HORIZONTAL TALENT trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain names are identical or confusingly similar to Complainant's HORIZONTAL TALENT trademark. In this Complaint, the disputed domain names are confusingly similar to Complainant's HORIZONTAL TALENT trademark because, disregarding the both the ".com" and ".team" generic Top-Level Domains ("gTLDs"), the entirety of the trademark is contained within each of the disputed domain names. [WIPO Overview 3.0](#), section 1.7. ("This test 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 domain name ... [I]n 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..."). In regards to gTLDs, such as ".com" or ".team" in the disputed domain names, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The disputed domain name <horizontaltalents.com> consists of a plural version of Complainant's HORIZONTAL TALENT trademark, which cannot prevent confusing similarity. "[I]t is trite law and basic common sense that the mere change from singular to plural or *vice versa* is not sufficient to avoid confusion for trademark purposes or passing off purposes. No one could expect to survive very long in the automotive field using the trademark GENERAL MOTOR by arguing that it is singular and thus not confusing with the plural version." *i2 Technologies Inc. v. Richard Alexander Smith*, WIPO Case No. [D2001-0164](#); see also *Cox Automotive Australia Pty, Ltd v. Carsales.com Limited / Matt Martin*, WIPO Case No. [DAU2017-0012](#) ("Contrary to the Respondent's argument, the Panel considers that there is a high likelihood that members of

the public would confuse the plural term for the singular and vice versa” and “the test under this element of the Policy requires only a simple visual and aural comparison. As the Complainant points out, the disputed domain name incorporates the whole of the Complainant’s trademark. The addition of the ‘s’ to the Complainant’s trademark does not dispel the overall impression of similarity”).

Furthermore, it is well established that domain names which consist of common, obvious, or intentional misspellings of trademarks are considered to be confusingly similar for the purposes of the first element of the Policy. [WIPO Overview 3.0](#), section 1.9 (“Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters ... (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersing of other terms or numbers”). See e.g., *Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#) (“This is clearly a ‘typosquatting’ case where the disputed domain name is a slight misspelling of a registered trademark to divert internet traffic ... In fact, the domain name comprises the Complainant’s trademark ... with a single misspelling of an element of the mark: a double consonant “s” at the end.”) See e.g., *General Electric Company v. mr domains (Marcelo Ratafia)* WIPO Case No. [D2000-0594](#) (“In the Panel’s opinion ‘www-’ used in this context is a generic term which does nothing to reduce the potential for confusion, and therefore the panel is of the opinion that the Domain Names are for all intents and purposes identical to the registered trademark.”) In this Complaint, Respondent has purposefully added an “s” to Complainant’s HORIZONTAL TALENT trademark with respect to the disputed domain name <horizontaltalents.com>.

As regards the disputed domain name <horizontaltalent.team>, the disputed domain name is identical to the Complainant’s trademark when ignoring the gTLD.

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain names, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1.

It is evident that Respondent, identified by Whois data for the disputed domain names as “Honey Love”, is not commonly known by the disputed domain name or Complainant’s HORIZONTAL TALENT trademark. Moreover, as further described below, it appears that the Respondent utilized fraudulent information for purposes of the registration of the disputed domain names when considering the identification of the Respondent Organization, “Sotheby’s Institute of Art”, which is a prominent for-profit institution based in the United Kingdom, whereas the Respondent is reportedly located in the US.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its trademark and does not have any rights or legitimate interests in the disputed domain names. Respondent has not used the disputed domain names in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, the evidence demonstrates that Respondent has used the disputed domain name <horizontaltalent.team> to divert Internet users to Complainant’s own website. Use of the disputed domain name to redirect Internet users to Complainant’s own website cannot confer any rights or legitimate interest in the disputed domain name to Respondent. See, e.g., *Ann Summers Limited v. Domains By Proxy, LLC / Mingchun Chen*, WIPO Case No. [D2018-0625](#) (“Furthermore, panels have found that unauthorized redirection to Complainant’s website does not serve as evidence of rights or legitimate interests. *Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records*, WIPO Case No. [D2017-2533](#).”)

UDRP panels have categorically held that use of a domain name for illegal activity—including the impersonation of the complainant and other types of fraud—can never confer rights or legitimate interests on a respondent. Circumstantial evidence can support a credible claim made by Complainant asserting Respondent is engaged in such illegal activity, including that Respondent has masked its identity to avoid being contactable, or that Respondent’s website has been suspended by its hosting provider.

[WIPO Overview 3.0](#), section 2.13. See *e.g.*, *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#) (“Respondent has used the domain name to pretend that it is the Complainant and in particular to create false emails pretending that they are genuine emails coming from the Complainant and one of its senior executives”); see also *The Commissioners for HM Revenue and Customs v. Name Redacted*, WIPO Case No. [D2017-0501](#) (“In addition, the disputed domain names ... have had their web hosting suspended as a result of fraudulent activities. This is evidence of bad faith registration and use of the disputed domain names”). In its Complainant, Complainant has submitted persuasive evidence that, at least one of the disputed domain names has been used by Respondent in furtherance of an illegal phishing and check fraud scheme. To this end, the second and third elements of the Policy may be assessed together where clear *indicia* of bad faith suggests that there cannot be any Respondent rights or legitimate interests. [WIPO Overview 3.0](#), section 2.15.

In view of the foregoing, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent’s documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted 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 of a product or service on Respondent’s website or location.

UDRP panels have categorically held that registration and use of a domain name for illegal activity—including impersonation, passing off, and other types of fraud—is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.3. Use of the disputed domain name by Respondent to pretend that it is Complainant or that it is associated with Complainant “brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows Respondent registered the domain name primarily for the purpose of disrupting the business of a competitor, namely Complainant.” See *Edelman, Inc. v. Devteam Meetey*, WIPO Case No. [D2016-0500](#) (“The bad faith of the Respondent follows from the uncontested fact that the Respondent impersonated employees of the Complainant and even used the disputed domain name in requesting a third party to pay a large amount of money to the Respondent.

This can only be seen as a very clear fraudulent behavior. Registering a domain name which is confusingly similar to the trademark of a complainant and subsequently using such domain name to impersonate employees of the Complainant in an attempt to commit fraud is a clear example of registration and use in bad faith. This Panel considers such behavior as an attempt to disrupt the business of the Complainant as well as an attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark"); *Sumitomo Dainippon Pharma Co., Ltd., Sunovion Pharmaceuticals Inc. v. Raid Benson*, WIPO Case No. [D2018-2893](#) (finding bad faith when the domain name was used to create email addresses that were used to defraud third parties by impersonating employees of the Complainants).

As discussed above, Complainant has proffered evidence establishing Respondent's use of the disputed domain names in furtherance of Respondent's illegal phishing and check fraud scam, specifically Respondent used the disputed domain names to: (i) redirect to Complainant's official website; (ii) to send emails and LinkedIn messages to prospective job applicants impersonating Complainant; (iii) schedule and conduct putative interviews with prospective job applicants impersonating Complainant; (iv) and send putative interview materials, fraudulent checks, and invoices to prospective job applicants, all while impersonating Complainant.

Finally, it is evident from the record that "Honey Love, Sotheby's Institute of Art" is a false or fictitious pseudonym used by Respondent as Whols data for the disputed domain names to further obfuscate Respondent's true identity and its illegal phishing and check fraud scheme. Prior UDRP Panel determinations agree, the use of false registration data in connection with a disputed domain name further supports a finding of bad faith registration and use. *See e.g., Action Instruments, Inc. v. Technology Associates*, WIPO Case No. [D2003-0024](#) (Providing false contact information violates paragraph 2 of the Policy, which requires a registrant to represent that the statements it made in [its] Registration Agreement are complete and accurate.' Maintaining that false contact information in the Whols records (which can easily be updated at any time) after registration constitutes bad faith use of the domain name because it prevents a putative complainant from identifying the registrant and investigating the legitimacy of the registration."); *Royal Bank of Scotland Group v. Stealth Commerce v. a.k.a. Telmex Management Services, Inc.*, WIPO Case No. [D2002-0155](#); *Home Director, Inc. v. HomeDirector*, WIPO Case No. [D2000-0111](#).

In view of the foregoing, the Panel concludes that Complainant has established the third element of the Policy.

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 names, <horizontaltalents.com> and <horizontaltalent.team>, be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: November 10, 2023