

ADMINISTRATIVE PANEL DECISION

Walgreen Co. v. Lonzo Harden, Bella MarathonChoice
Case No. D2023-3689

1. The Parties

The Complainant is Walgreen Co., United States of America (“United States”), represented by Winterfeldt IP Group PLLC, United States.

The Respondent is Lonzo Harden, Bella MarathonChoice, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2023. On September 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 4, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name that differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 5, 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 September 7, 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 October 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2023. The Respondent did not submit a response. Accordingly, the Center notified the Respondent’s default on October 23, 2023.

The Center appointed A. Justin Ourso III as the panelist in this matter on October 30, 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, an American company, operates the well-known “Walgreens” retail pharmacy chain throughout the United States and certain of its territories.

The Complainant owns a United States registration for its WALGREENS trademark, registration No. 1100522, issued on September 16, 1997, with a first use in Class 42 in 1900 for “pharmacy and retail store services”, and for various goods in seven other classes, and a United States registration for its WALGREENS trademark, registration No. 1057249, issued on January 25, 1977, with a first use in Class 42 in 1971 for “storage and retrieval of pharmaceutical prescription data”, among other registrations, including international registrations.

The Complainant is the registrant for the domain name <walgreens.com>, which it registered on May 4, 1995, and which consists of its WALGREENS trademark and a generic Top-Level Domain (“gTLD”).

The Respondent registered the Domain Name on September 30, 2022, without any authorization from the Complainant. At the filing of the Complaint and during the preparation of this Decision it did not resolve to an active web site.

5. Parties’ Contentions

A. Complainant

In addition to facts set forth in the Factual Background in Section 4 above, the Complainant contends the following.

Regarding the element of confusing similarity with a trademark in which it has rights, the Complainant contends that it owns national and international trademark registrations for its WALGREENS trademark and, therefore, has established trademark rights under the Policy; the Domain Name fully incorporates its mark, with the addition of the letters “rs”, which the Respondent intends to reflect a typo for “rx”, an abbreviation for the word “prescription”; the Domain Name is confusingly similar to its mark; the addition of the letters “rs” exacerbates the confusion because of the Complainant’s prescription services; and the gTLD “.com” may be disregarded under the first element.

Regarding the element of rights or legitimate interests in the Domain Name, among other contentions, the Complainant contends that it has not licensed or otherwise authorized the Respondent to use its trademark; the Respondent registered the Domain Name long after the Complainant registered its WALGREENS trademarks and established extensive goodwill in them, including in relation to medical prescription services, which the Respondent targeted by including the letters “rs”, a typo reference to “rx”, in the Domain Name; the Domain name does not reflect the Respondent’s common name; the Respondent is not using but is passively holding the Domain Name with the associated website in an inactive state, which is not a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use; no credible and legitimate intent can exist for using the Domain Name that would not trade on the reputation in the Complainant’s mark, and, the Complainant has established that the Respondent lacks rights or legitimate interests in the Domain Names.

Regarding the element of bad faith registration and use of the Domain Name, among other contentions, the Complainant contends that its trademark is famous throughout the United States and the world, as recognized by prior UDRP panels, and the Respondent could not have been unaware of it; the Domain

Name does not resolve to an active web site, but to “an error page”, which diverts users expecting to find web content associated with the Complainant, frustrating users and tarnishing their impression of the Complainant and its brand, and disrupting the Complainant’s business, which constitutes bad faith under the passive holding doctrine; the Respondent concealed its identity through a privacy protection service; no plausible good faith use to which the Domain Name may be put exists, and, accordingly, the Respondent registered and is using the Domain Name in bad faith.

The Complainant requested transfer of the Domain Name.

B. Respondent

The Respondent did not submit a response to the amended Complaint.

6. Discussion and Findings

A complainant must prove three elements to obtain relief: (i) the domain name is identical or confusingly similar to a trademark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in the domain name; and (iii) the respondent registered and is using the domain name in bad faith. Policy, paragraph 4(a).

A. Identical or Confusingly Similar

On the first element, the Panel finds that the Domain Name <walgreenrs.com> is confusingly similar to the Complainant’s WALGREENS trademark. The trademark is readily recognizable within the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), sections 1.7 and 1.8. Accordingly, the Panel concludes that the Complainant has proven the first element: the Domain Name is confusingly similar to a trademark in which it has rights.

B. Rights or Legitimate Interests

The Respondent has not claimed the existence of any circumstance under the Policy, paragraph 4(c), that demonstrates that a respondent has rights to, or legitimate interests in, a domain name. The Complainant, on the other hand, has shown that it established its trademark rights before the Respondent registered the Domain Name, it has not authorized the Respondent to use its trademark, no evidence exists that the Respondent is commonly known by the Domain Name, and the Respondent is passively holding the Domain Name, which does not resolve to a functioning site, and which is not a *bona fide* commercial use, a noncommercial use, or a fair use of the Domain Name. These constitute *prima facie* a showing that the Respondent lacks any rights or legitimate interests in the Domain Name under the Policy, paragraph 4(a)(ii), shifting the burden of production on this second element to the Respondent to come forward with relevant evidence proving rights or legitimate interests in the Domain Name. [WIPO Overview 3.0](#), section 2.1. The Respondent has not submitted any evidence to rebut the *prima facie* showing.

Additionally, the Panel finds that the Respondent masked its identity by using a privacy service; the Registrar identified the Respondent as “Lonzo Harden, Bella MarathonChoice”, which does not resemble the Domain Name, and provided an email address for the Respondent that does not resemble the Domain Name, which corroborate that the Respondent is not commonly known by the Domain Name; the Respondent provided an incorrect address to the Registrar; the Respondent failed to provide any evidence of an actual or a planned *bona fide* commercial use, a noncommercial use, or a fair use of the Domain Name, or even to respond to the Complaint. Accordingly, the Panel concludes that the Complainant has proven the second element: the Respondent lacks rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Panels have consistently found that the mere registration of a domain name that is confusingly similar to a well-known trademark, particularly where the Respondent adds a descriptive word to the trademark, can create a presumption of bad faith registration. [WIPO Overview 3.0](#), section 3.1.4. The Respondent has not even attempted to rebut this presumption. The Complainant used and registered its well-known mark long before the Domain Name registration. The Panel finds that the Respondent must have been aware of the Complainant's trademark and of the Complainant's rights in its mark at the time that the Respondent registered the Domain Name. [WIPO Overview 3.0](#), section 3.2.2.

In addition to the facts found and recited above, the Panel finds that the letters "rs" at the end of the Domain Name betray an intent to misleadingly associate the Domain Name with the Complainant's trademark (the letters "rs" in the Domain Name are an obvious intentional misspelling of the abbreviation "rx" for the word "prescription", that is likely to be a common typo when Internet users attempt to type the abbreviation in a search engine or browser); no *bona fide* use of the Domain Name is plausible; and the Respondent's failure to explain the Domain Name, coupled with an absence of rights or legitimate interests, tends to show bad faith. All these findings compel the Panel to conclude that the Respondent intentionally registered the Domain Name in bad faith to take unfair advantage of the Complainant's trademark and that the Respondent is using the Domain Name in bad faith, in violation of the Policy. [WIPO Overview 3.0](#), sections 3.1.3, 3.2.1, and 3.2.2.

The Domain Name does not resolve to an active, functioning website. However, panels have consistently found that non-use of a domain name does not prevent a finding of bad faith, under the doctrine of passive holding, when other elements are present that demonstrate bad faith. [WIPO Overview 3.0](#), section 3.3. Accordingly, the Panel concludes that the Complainant has proven the third element: the Respondent registered and is using the Domain Name 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 Domain Name, <walgreenrs.com>, be transferred to the Complainant.

/A. Justin Ourso III

A. Justin Ourso III

Panelist

Date: November 13, 2023