

ADMINISTRATIVE PANEL DECISION

Augnito India Pvt. Ltd. v. Abhishek Tank, Augnito Solutions
Case No. D2023-3931

1. The Parties

The Complainant is Augnito India Pvt. Ltd., India, represented by Vashi and Vashi, Advocates and Solicitors, India.

The Respondent is abhishek tank, Augnito Solutions, India.

2. The Domain Name and Registrar

The disputed domain name <augwork.live> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2023. On September 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 21, 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 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 formal Response, but sent an email communication to the Center on October 4 and 6, 2023. The Center informed the parties that it will proceed to panel appointment on October 27, 2023.

The Center appointed Shwetasree Majumder as the sole panelist in this matter on October 31, 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 engaged in the business of healthcare intelligence and has a product under the trademark AUGNITO, that converts voice to text. The Complainant's trademark AUGNITO is registered in India. Details of such registrations are as below:

Trademark	Indian Registration number	Date of Registration
AUGNITO	5179582	October 20, 2021
AUGNITO	4202673	June 11, 2019
AUGNITO	5179584	October 20, 2021

The Complainant has also applied for a stylised A figurative mark as depicted below, on June 29, 2022 under Indian application numbers 5510381 and 5510382.



The Complainant owns the domain name <augnito.ai> which was registered on March 6, 2019. The Complainant's website for its business activities is "www.augnito.ai"

The disputed domain name <augwork.live> was registered on February 16, 2023. The Complainant states that the disputed domain name resolves to a website, which purports to offer similar services as the Complainant and also uses the Complainant's stylised A figurative mark. The Complainant has not filed the extracts of the website linked to the disputed domain name by way of a separate Annex with its Complaint. But in perusal of the documents, the Panel noticed that these web extracts can be seen at page 23 of Annex 7 of the Complaint. At the time of this decision, the disputed domain name does not resolve into an active website.

5. Parties' Contentions

A. Complainant

The Complainant in the course of its business developed an artificial intelligence product under the trademark AUGNITO that converts voice to text. The Complainant is a registered proprietor of its trademark AUGNITO in India. The Complainant has stated that its registered trademark AUGNITO has acquired goodwill and reputation in the medical industry.

The Complainant states that the disputed domain name has blatantly copied its trademark AUGNITO by incorporating the prefix of the Complainant's mark. The Complainant argues that the disputed domain name is a clear adaptation of its trademark AUGNITO, by incorporating the first half being 'aug' in addition of the word 'work'- thus implying work provided by AUGNITO. A person of imperfect recollection would no doubt be confused that the disputed domain name to be a website managed and maintained by the Complainant.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. Further, the Respondent has not only infringed the trademark AUGNITO but also misrepresented himself as being associated with the Complainant. The Respondent has been committing financial fraud and scamming people using the disputed domain name. Prior to filing this Complaint, the Complainant has sent cease and desist notice to the Respondent for trademark infringement and misrepresentation. The Complainant has also filed complaint against the Respondent with the Mumbai Police Cyber Cell in India for the alleged financial fraud. It is clear, the Complainant argues, that the disputed domain name has been registered and used in bad faith for fraudulent acts.

B. Respondent

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

6. Discussion and Findings

As per paragraph 5(e) of the Rules where a respondent does not submit a response, in the absence of exceptional circumstances, the panel may decide the dispute based upon the Complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response. As per paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the panel may draw such inferences as it considers appropriate. It remains incumbent on the Complainant to make out its case in all respects under paragraph 4(a) of the Policy.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required under by a preponderance of evidence:

- 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. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. 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.

There is no doubt that the Complainant has rights in the trademark AUGNITO. Further, as per the settled principle, generic Top-Level Domain ("gTLD") ".live" is usually disregarded for the purposes of comparison under the first element.

However, the disputed domain name does not incorporate the Complainant's mark AUGNITO in its entirety. At this juncture it is worth noting that accordingly to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), in specific limited instances, while not a replacement as such for the typical side-by-side comparison, where a panel would benefit from affirmation as to confusing similarity with the complainant's mark, the broader case context such as website content trading off the complainant's reputation, may support a finding of confusing similarity. There have been previous UDRP decisions where first element was satisfied giving record to broader case context, despite the fact that the complainant's mark was not easily recognizable in the disputed domain name.

In *VF Corporation v. Vogt Debra*, WIPO Case No. [D2016-2650](#), the panel found the domain name <bagpakonline.com> confusingly similar to the complainant's mark EASTPAK for purposes of the first element of the Policy. The panel noted that <bagpakonline.com> resolved to a website displaying the complainant's EASTPAK logo and products bearing the EASTPAK mark. Similarly, in *Bayerische Motoren Werke AG ("BMW") v. Registration Private, Domains By Proxy, LLC / Armands Piebalgs*, WIPO Case No. [D2017-0156](#), the panel observed that the content at the corresponding website serves to affirm a finding of confusing similarity under the first element. Also, in *Zippo Manufacturing Company v. Domains by Proxy, LLC and Paul Campanella*, WIPO Case No. [D2014-0995](#), the panel found the domain name <zippycatalog.com> confusingly similar to complainant's mark ZIPPO owing to display of complainant's products on the website.

In the context of the first element, the present case too is of such special circumstance. Pages 23-24 of Annex 7 of the Complaint are web extracts of the website linked to the disputed domain name. The Complainant's stylised A figurative mark can be clearly seen on these web extracts. The look and feel of the Respondent's website also appears to be similar to Complainant's website "www.augnito.ai".

In its cease-and-desist notice (Annex 6 of the Complaint), the Complainant has alleged that the website linked to the disputed domain name is an exact replica of its website “www.augnito.ai” and also uses the tradename and address of the Complainant. The Respondent’s misrepresentation goes far as also copying Complainant’s company history in its brochure (Annex 9). This brochure also shows that the Respondent is using “www.augwork.live” as its website and an email address using the Complainant’s trademark AUGNITO as its email address. This Panel finds that the Respondent has clearly targeted the Complainant’s mark.

In view of the above, the Panel is inclined to find the disputed domain name confusingly similar to the Complainant’s mark. The Panel concludes that Policy paragraph 4(a)(i) has been satisfied by the Complainant.

B. Rights or Legitimate Interests

The consensus view of the second element under paragraph 4(a) of the Policy requires the Complainant to establish on a *prima facie* basis that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has already submitted evidence that it holds exclusive rights in the trademark AUGNITO by virtue of statutory registrations and by common law use, which rights have accrued in the Complainant’s favour.

It is the Complainant’s case that the Respondent is guilty of financial fraud by duping the public through the disputed domain name. The Panel has perused the documents filed by the Complainant in support of its allegations, namely cease and desist notice to the Respondent (Annex 6), the Complainant’s police complaint (Annex 8), the Respondent’s product/service brochure (Annex 9) and website extracts of the disputed domain name seen at pages 23-24 of Annex 7. The Panel finds that the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services. On the contrary, the Respondent directed the disputed domain name to a website where the Respondent purports to offer identical services by misrepresenting itself as the Complainant or being its affiliate.

The view of previous UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy has been summarized in section 2.1 of the [WIPO Overview 3.0](#), which states: “While the overall burden of proof in UDRP proceedings is on the complainant, [...] 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 to demonstrate its rights or legitimate interest in the domain name.”

The Respondent has failed to file a response to rebut the Complainant’s *prima facie* case or to advance any claim as to rights or legitimate interests in the disputed domain name (particularly, in accordance with paragraph 4(c) of the Policy).

Accordingly, the Panel finds the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy. Bad faith is understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark (see section 3.1 of the [WIPO Overview 3.0](#)).

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another.

For the reasons discussed under this and the preceding heading, the Panel considers that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy. It is clear from the relevant circumstances that the Respondent was well aware of the Complainant and had the Complainant's AUGNITO mark in mind when registering the disputed domain name. The record convincingly demonstrates that the Respondent's primary motive in relation to the registration and use of the disputed domain name was to capitalize on or otherwise take advantage of the Complainant's trademark rights, through the creation of Internet user confusion. In view of all of the foregoing, the Panel concludes that the Respondent registered and has used the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy, to intentionally attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship or affiliation.

The Respondent has not availed himself of the opportunity to present any case of good faith that it might have had, and, in view of the circumstances, the Panel cannot conceive of any. Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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 name <augwork.live> be transferred to the Complainant.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: November 29, 2023