

ADMINISTRATIVE PANEL DECISION

Defiant, Inc. v. Chen qiao ling
Case No. D2023-4817

1. The Parties

The Complainant is Defiant, Inc., United States of America (“United States”), represented by K&L Gates, LLP, United States.

The Respondent is Chen qiao ling, China.

2. The Domain Name and Registrar

The disputed domain name <wordfencesecurity.com> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 20, 2023. On November 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 24, 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 (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 November 30, 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 December 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2024.

The Center appointed Zoltán Takács as the sole panelist in this matter on January 19, 2024. 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 corporation organized and existing under the laws of the State of Delaware, with a place of business at Seattle, Washington, United States.

The Complainant is known as one of the leading providers of software and services to provide endpoint firewalls and protect against malware.

More than 4 million active WordPress websites currently use the Complainant's Wordfence program which has been downloaded over 200 million times. WordPress is an open-source content management tool for individuals without any coding experience who want to build websites and blogs.

The Complainant owns a number of trademark registrations around the world consisting of or comprising WORDFENCE, protecting various goods and services related to antivirus and security software.

These trademark registrations include, by way of example:

- United States Trademark Registration No. 4387116 for the word mark WORDFENCE registered since August 20, 2013, and
- International Trademark Registration ("IR") No. 1359506 for the mark WORDFENCE and design registered since June 5, 2017 in a number of jurisdictions, including in China, where the Respondent's appears to be located.

The Complainant's primary international website is located at "www.wordfence.com". The corresponding domain name <wordfence.com> was registered on August 20, 2011.

The disputed domain name was registered on November 10, 2022 and was redirecting to a parked page with links to third party websites advertising "security" goods and services. One of the links from the parked page indicated that the disputed domain name was offered for sale for USD 1,488. Currently, the disputed domain name resolves to a website that alleges to be an online location of an agency specialized "in domain name security and anti-cybersquatting measure".

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- the disputed domain name, which fully incorporates its WORDFENCE trademark with addition of the descriptive term "security" is confusingly similar to the trademark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

- the Respondent's use of the disputed domain name to host a parked page comprising primarily competing pay-per-click (PPC) links; the Respondent's offer to sell the disputed domain name for the price exceeding the costs related to the disputed domain name and the Respondent's use of the disputed domain name to distributing malware is evidence of bad faith registration and use.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the 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 domain name; and
- (iii) the 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.

The entirety of the mark is reproduced within the disputed domain name. Although the addition of other terms, in this case "security" may bear on assessment of the second and third elements, the Panel finds the addition of such term 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](#), sections 1.7 and 1.8.

The applicable generic Top-Level Domain ("gTLD") in the disputed domain name (in this case ".com") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that 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.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often 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 (although the burden of proof always remains on the complainant). 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 available record, 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 Respondent’s use of the disputed domain name to host a parked page comprising primarily competing PPC links and offer to sell the disputed domain name for the price likely exceeding the costs related to the disputed domain name does not represent a bona fide offering of goods and services and as such cannot confer rights or legitimate interests on the Respondent.

The Complainant presented a sworn affidavit of its Director of Information Security, stating that she investigated the website at the disputed domain name after receiving reports of malicious content and that when she accessed the webpage it displayed a message stating that her computer was infected and directed her to download software that was malware. The Respondent did not challenge the sworn statement of the Complainant’s chief security officer and it is therefore the Panel’s view that, on a balance of probabilities the program downloadable from the Respondent’s website was malware. Panels have held that the use of a domain name for illegal activity, here distributing malware can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent replicated the Complainant’s distinctive WORDFENCE trademark in the disputed domain name. The Respondent chose not to respond to the Complaint and present a credible evidence-backed rationale for registering the disputed domain name. In the Panel’s view it is highly unlikely that the Respondent registered the disputed domain name without having in mind the Complainant’s prior trademark and without intent to target the Complainant and its trademark.

In consideration of these circumstances the Panel finds that the Respondent’s use of the disputed domain name to host a parked page comprising primarily competing PPC links and listing of the disputed domain name for a price likely in excess of any out-of-pocket expenses that the Respondent could reasonably have incurred in acquiring the disputed domain name (absent any evidence from the Respondent to the contrary)

amounts to bad faith registration and use. Paragraph 4(b)(i) of the Policy and [WIPO Overview 3.0](#), section 3.1.1.

As mentioned above, the Respondent did not rebut the Complainant's showing that the website at the disputed domain name redirected Internet traffic to a malware scam. UDRP panels have held that the use of a domain name for purposes other than to host a website, in this case distributing malware constitute bad faith. [WIPO Overview 3.0](#), section 3.4.

As mentioned above, currently the disputed domain name resolves to a website that alleges to be an online location of an agency specialized "in domain name security and anti-cybersquatting measure". In the Panel's view, using the disputed domain which blatantly disregards the intellectual property rights of the Complainant to resolve to a website which deals with anti-cybersquatting measure and attempts to give the appearance that a legitimate business operates the site is particularly cynical. Altogether, the fact the Respondent changed his use of the disputed domain name following notice of the dispute is still evidence of bad faith registration and use under paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds that the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy and that the 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 name <wordfencesecurity.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: February 2, 2024