

ADMINISTRATIVE PANEL DECISION

Pension Benefit Guaranty Corporation v. Glorioso, Anne, Solidarity Health Network, Inc.

Case No. D2023-4916

1. The Parties

The Complainant is Pension Benefit Guaranty Corporation, United States of America (“United States”), represented by William Black, United States.

The Respondent is Glorioso, Anne, Solidarity Health Network, Inc., United States.

2. The Domain Name and Registrar

The disputed domain name <mypbgcsupport.com> is registered with Register.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 27, 2023. On November 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 5, 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 (Register.com d/b/a Perfect Privacy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, providing the registrant and contact information disclosed by the Registrar, and requesting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on December 6, 2023.

The Center verified that the Complaint, together with the amendment to the Complaint/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 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 2, 2023.

The Center appointed William F. Hamilton as the sole panelist in this matter on January 4, 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 the Pension Benefit Guaranty Corporation, an executive branch agency of the United States Government established under Title IV of the Employee Retirement Income Security Act (ERISA), Pub.L. 93- 406, 88 Stat. 829 (Sept. 2, 1974) (Annex 1 of the Complaint). The Complainant was created with the primary objectives of (1) encouraging the continuation and maintenance of voluntary private pension plans for the benefit of participants, (2) ensuring the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and (3) maintaining premiums at the lowest level consistent with its obligations. Security Act regulations 29 Code of Federal Regulations § 4002.2 and 29 United States Code § 1302 (2006) (Annex 2 of the Complaint). The primary mission of the Complainant is to guarantee defined benefit pensions of retirees in cases where companies with under-funded pension plans become insolvent. The Complainant operates as a United States Government agency and maintains its principal place of business in the District of Columbia, United States.

The Complainant has continuously used the service mark PBGC (the “Mark”) for over three decades. The Complainant provides pension coverage for approximately 33 million workers, as documented in the Pension Benefit Guaranty Corporation 2022 Annual Report under Annex 1. The Complainant owns and uses the domain name <pbgc.gov>, registered in 1997 with the United States Government Domain Registration and Services. The Complainant’s Annexes establish the consistent provision of a well-established public service by the Complainant utilizing the Mark.

The disputed domain name was registered on April 19, 2018. The disputed domain name resolves to a website featuring click-per-click (“PPC”) links to third-party services related to pensions and retirement planning.

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 is confusingly similar to the Mark because the disputed domain name is composed by entirely adopting the Mark and adding the terms “my” and “support”. The Complainant asserts that the Complainant never authorized the Respondent to use the Mark or register the disputed domain name, that the Respondent is not generally known by the disputed domain name, never operated a business under the disputed domain name, has not advertised the disputed domain name, and never engaged in any *bona fide* commercial activity in connection with the disputed domain name. The Complainant asserts that the Respondent knew of the Mark and has used the disputed domain name in bad faith to attract unsuspecting Internet users to its website for commercial benefit or to collect consumer information.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (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 was registered and is being used in bad faith.

6.1 Procedural Issues: Respondent Identity

Paragraph 1 of the Rules defines the Respondent as “the holder of a domain-name registration against which a complaint is initiated”. The Registrar has confirmed that the Respondent (“Anne Glorioso, Solidarity Health Network, Inc.”) is the registrant of the disputed domain name. Moreover, the amended Complaint was submitted naming the Registrar-disclosed registrant of the disputed domain name as the Respondent. However, the amended Complaint also included two other entities, namely “Confluence Networks Inc.” and “Candera, Inc. d/b/a Confluence Networks, Inc.”, based on the arguments that the disputed domain name was detected to have been hosted from an IP address connected to these entities.

In view of the information disclosed by the Registrar, the Panel will proceed on the basis that only the Registrar-disclosed registrant, Anne Glorioso, Solidarity Health Network, Inc., is the Respondent.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The first element functions primarily as a standing requirement. The threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s service mark 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 established unregistered service mark rights for the purposes of the Policy in the Mark. [WIPO Overview 3.0](#), section 1.3.

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. The addition of other terms, here “my” and “support”, 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.

The generic Top-Level Domain of the disputed domain name, in this case “.com”, may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

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.

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.

Also, panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

Based on the available record, the Panel finds 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. These circumstances include using the domain name "to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location." Policy(4)(b)(iv).

In the present case, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith by intentionally attempting to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's Mark. The Respondent registered the disputed domain name years after the Complainant acquired rights in the Mark. Panels in previous cases have determined that the domain names incorporating the same Mark were registered and used in bad faith. See *Pension Benefit Guaranty Corporation v. Belize Domain WHOIS Service Lt*, WIPO Case No. [D2008-1371](#), and *Pension Benefit Guaranty Corporation v. John Smith, Whois Protection Service, LLC*, WIPO Case No. [D2008-1370](#).

Based on the available record, the Panel finds 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, <mypbgcsupport.com>, be transferred to the Complainant.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: January 10, 2024