

ADMINISTRATIVE PANEL DECISION

EmpiRx Health LLC v. Eri Savage, Emprix
Case No. D2024-0226

1. The Parties

Complainant is EmpiRx Health LLC, United States of America (“United States”), represented by McDermott Will & Emery LLP, United States.

Respondent is Eri Savage, Emprix, United States.

2. The Domain Name and Registrar

The disputed domain name <empirxhealth.care> is registered with NameCheap, Inc. (“Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (“Center”) on January 19, 2024. On January 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 19, 2024, 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 (the Complaint identified Redacted for Privacy / Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on January 30, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. On January 30, 2024, the Center transmitted by email to Complainant a request for clarification of mutual jurisdiction. Complainant replied on January 30, 2024. Complainant filed an amended Complaint on February 1, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (“Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on February 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 1, 2024.

The Center appointed Debra J. Stanek as the sole panelist in this matter on March 11, 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

Complainant manages pharmacy benefits and owns the EMPIRX HEALTH mark. Complainant owns a United States trademark registration for the mark (Reg. No. 4,757,644), which was registered June 16, 2015, for pharmacy benefit management services as well as other registrations for the mark (for example, United States Reg. No. 4,845,703, for an EMPIRX HEALTH design mark, also for pharmacy benefit management services, registered November 3, 2015). Complainant owns and operates a website at the domain name <empirxhealth.com>.

The disputed domain name was registered November 14, 2023. Both at the time the Complaint was filed and at the time of this decision, it resolves to an inactive website.

According to the Complaint, Respondent has used the disputed domain name to create a “[...]@empirxhealth.care” email address used to correspond with a third party in the name of one of Complainant’s employees regarding employment with Complainant.

5. Parties’ Contentions

A. Complainant

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

Complainant has provided copies of communications sent using an email address that includes the disputed domain name. It includes a signature block identifying an actual employee of Complainant, identifying her as “Human Resources, Services.” The messages invited the individual to participate in a job interview with Complainant. According to a message forwarded to Complainant by the recipient, following an online interview, the individual was offered a job with Complainant and personal information was solicited.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Complainant requested that Respondent’s name be redacted from this decision, contending, on information and belief:

... the named respondent in this proceeding—Eri Savage, Emprix—is false, and is a misspelled version of Complainant’s name. Listing Respondent as such in this proceeding would unfairly result in a negative ruling in its (misspelled) name.

The Panel has the power, under the Policy, paragraph 4(j), to redact portions of its decision in “exceptional circumstances.” Asserting that the name provided for the registrant is “false” and that the name provided for the registrant organization is a misspelling of Complainant’s name does not, in the Panel’s view, constitute exceptional circumstances. Compare *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#) (name redacted where individual named denied registering

the disputed domain name and the individual's claim was supported by evidence from the registrar and hosting company).

Accordingly, the Panel determines that "Eri Savage, Emprix" is the appropriate Respondent.

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 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.

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. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Complainant has provided credible evidence that Respondent has used the domain name to impersonate Complainant's employee in a fraudulent effort to obtain personal information from a target of the impersonation. The use of a domain name for such activity does not confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. The Panel also finds that, under these circumstances, use of "Emprix," as the name of the Respondent organization in the registration record does not establish that Respondent is known as or otherwise has rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Based on the record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, having reviewed the record, the Panel finds that use of the disputed domain name, including to impersonate a representative of Complainant, constitutes registration and use in bad faith under the Policy. [WIPO Overview 3.0](#), section 3.4.

The Panel finds 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 name <empirxhealth.care> be transferred to Complainant.

/Debra J. Stanek/

Debra J. Stanek

Sole Panelist

Date: March 25, 2024