

## **ADMINISTRATIVE PANEL DECISION**

The University of Phoenix, Inc. v. Taras Birukov  
Case No. D2024-0314

### **1. The Parties**

The Complainant is The University of Phoenix, Inc., United States of America (“United States”), represented by Quarles & Brady LLP, United States.

The Respondent is Taras Birukov, Ukraine.

### **2. The Domain Name and Registrar**

The disputed domain name <phoenix-university.org> is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 24, 2024. On January 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 25, 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 (Redacted for Privacy, c/o Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 26, 2024, 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 January 30, 2024.

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 February 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 23, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on February 28, 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 private university headquartered in Phoenix, Arizona, United States, with campuses located in Arizona, California, Hawaii, and Texas. It has been continually accredited since 1976. The Complainant offers various in-person and online bachelor, masters, and doctorate degree programs in business, technology, healthcare, education, and nursing.

The Complainant is the owner of a number of trademark registrations for the sign “UNIVERSITY OF PHOENIX” (the “UNIVERSITY OF PHOENIX trademark”), including the following registrations:

- the United States trademark UNIVERSITY OF PHOENIX (word) with registration No. 1,540,927, registered on May 23, 1989 for services in International Class 41. The claimed date of first use in commerce of this trademark is June 16, 1980;
- the European Union trademark THE UNIVERSITY OF PHOENIX (word) with registration No. 001469766, registered on March 19, 2001 for services in International Class 41;
- the International trademark UNIVERSITY OF PHOENIX and device with registration No. 960906, registered on April 16, 2008 for services in International Class 41; and
- the United States trademark UNIVERSITY OF PHOENIX and device with registration No. 4,665,981, registered on January 6, 2015 for goods and services in International Classes 3, 6, 9, 16, 18, 21, 24, 25 and 28.

The disputed domain name was registered on December 21, 2020. It resolves to a website that appears as an official website of the Complainant, displays the Complainant’s trademark UNIVERSITY OF PHOENIX and device, and offers essay and thesis writing services through hyperlinks to various third-party websites.

#### **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.

The Complainant states that the disputed domain name is confusingly similar to its UNIVERSITY OF PHOENIX trademark, because it consists of the two dominant elements of the Complainant’s trademark in reverse order.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent registered the disputed domain name in 2020, which is 40 years after the Complainant started using its UNIVERSITY OF PHOENIX trademark and 31 years after it first registered the same trademark in the United States. The Complainant states that the Respondent is not commonly known as “Phoenix University”, is not a licensee of the Complainant and has not been authorized to use the UNIVERSITY OF PHOENIX trademark for any purpose.

The Complainant states that the Respondent does not offer any bona fide goods or services via the disputed domain name. According to the Complainant, the webpage at the disputed domain name demonstrates that it was engineered to mislead Internet users into believing that the Respondent is actually the Complainant by repeatedly using the Complainant’s UNIVERSITY OF PHOENIX trademark and images from a prior version of the Complainant’s own website, and by purporting to offer the Complainant’s educational services.

The Complainant notes that the website at the disputed domain name provides links to third-party essay and thesis writing services. According to the Complainant, the Respondent thus intentionally trades on the goodwill of the Complainant's trademark to attract Internet users looking for the Complainant's educational services and offer them other services for commercial gain.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent knowingly registered the disputed domain name containing the Complainant's UNIVERSITY OF PHOENIX trademark to capitalize on the consumer recognition of this trademark. The Complainant points out that the Respondent registered the disputed domain name over forty years after the Complainant's first use of the UNIVERSITY OF PHOENIX trademark in commerce, and the website at the disputed domain name impersonates the Complainant. The Complainant concludes that by registering the disputed domain name, the Respondent sought to take unfair advantage of the goodwill associated with the Complainant's trademark and secure for itself a website that third parties would assume belonged to, or was affiliated with, the Complainant.

The Complainant points that the Respondent does not offer any bona fide goods or services under the disputed domain name but intentionally trades on the goodwill of the Complainant's trademark to attract Internet users looking for the Complainant's educational services to offer them third-party essay and thesis writing services for the Respondent's own commercial gain. The Complainant concludes that the Respondent has registered and used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's UNIVERSITY OF PHOENIX trademark by misleading Internet users into believing that the website at the disputed domain name and the featured services are associated with or affiliated with the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Procedural issue – Location of the Respondent**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. The location of the Respondent disclosed by the Registrar appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification. It is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The record shows that the Center's written notice could not be delivered by postal mail to the Respondent's mailing address disclosed by the Registrar, in terms of the paragraph 2(a)(i) of the UDRP Rules. However, it appears that the Notification of Complaint's emails were delivered to the Respondent's email address, as provided by the Registrar. There is no evidence that the case notification was not successfully delivered to the disclosed Respondent's email address. The Notification of Complaint and the written communication were also sent by the Center via the Registrar's privacy protection email address for the disputed domain name and at the privacy service postal address, and both Notification of Complaint emails and written communication were delivered.

The Respondent thus appears to have received notification of the Complaint and would have been able to formulate and file a Response in the administrative proceeding in case it wished to do so.

The Panel concludes that the Respondent allegedly located in Ukraine has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

## 6.2. Substantive issues

### 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.

The Complainant has shown rights in respect of the UNIVERSITY OF PHOENIX trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the UNIVERSITY OF PHOENIX trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the UNIVERSITY OF PHOENIX trademark for the purposes of the Policy. The disputed domain name incorporates the two distinctive elements "university" and "phoenix" of the Complainant's trademark, and the fact that these two elements are included in reverse order does not diminish the recognizability of the trademark. [WIPO Overview 3.0](#), section 1.7.

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.

The evidence in the case shows that the website at the disputed domain name appears as an official website of the Complainant and does not contain any disclaimer for the lack of relationship with it. The website includes the header "Home – University of Phoenix" and the copyright notice "© 2024 University of Phoenix, Inc." The website prominently features in full the Complainant's distinctive trademark UNIVERSITY OF PHOENIX and device, which includes a stylized image of a phoenix bird, and features various links to third-party offerings of essay and thesis writing services, introduced in a manner that may lead visitors to believe that such third-party services and their use are suggested and approved by the Complainant itself. The combination of the disputed domain name and the associated website thus impersonates the Complainant and unfairly exploits its goodwill for commercial gain, which cannot give rise to rights or legitimate interests in the disputed domain name.

On this basis, 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.

The disputed domain name is confusingly similar to the Complainant's name and trademark. It is associated to a website that impersonates the Complainant through its design and content and may well confuse visitors that it is the official website of the Complainant. Among content that appears to describe the Complainant's educational services, the website includes various links to third-party essay and thesis writing services, and they are introduced in a way that suggests that the use of these services is approved and encouraged by the Complainant. Considering this, and in the absence of any allegation or evidence supporting a different conclusion, the Panel finds that it is more likely than not that the Respondent has registered and used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's UNIVERSITY OF PHOENIX trademark by misleading Internet users into believing that the website at the disputed domain name and the featured writing services are endorsed by the Complainant.

The Panel therefore 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 <phoenix-university.org> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: March 8, 2024