

## **ADMINISTRATIVE PANEL DECISION**

Horizontal Integration, Inc. v. Jiva Solutions

Case No. D2024-0345

### **1. The Parties**

Complainant is Horizontal Integration, Inc., United States of America (“United States”), represented by Fredrikson & Byron, PA, United States.

Respondent is Jiva Solutions, United States.

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

The disputed domain name <horizontalconsulting.com> (the “Domain Name”) is registered with IONOS SE (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 25, 2024. On January 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 29, 2024, the Registrar transmitted by email to the Center its verification response, confirming that Respondent is listed as the registrant and providing additional contact details. The Center sent an email 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. Complainant filed an amendment to the Complaint on January 31, 2024.

The Center verified that the Complaint together with the amendment to 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 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. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 23, 2024.

The Center appointed Robert A. Badgley as the sole panelist in this matter on March 8, 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**

According to the Complaint:

“Complainant is a staffing agency with a focus on recruiting, vetting, and deploying IT, creative and digital marketing, and business and strategy management talent. Complainant has been offering its staffing agency services since 2003. Currently, Complainant has offices in the United States in Minneapolis, Chicago, Denver, Dallas, and internationally in Bengaluru, Hyderabad, Pune, Vadodara, Kuala Lumpur, and Melbourne. [...] Complainant has continuously used the trademark HORIZONTAL TALENT in connection with employment staffing and recruitment services since as early as August 11, 2020.”

Complainant annexes to the Complaint an August 11, 2020 screenshot (via “www.archive.org”) of Complainant’s website at the domain name <horizontaltalent.com>, which screenshot corroborates Complainant’s allegation about using the HORIZONTAL TALENT mark as early as August 11, 2020. Also appearing on that August 11, 2020 screenshot are two distinct logos that Complainant has been using since August 11, 2020.

The Domain Name was registered on June 8, 2021. The Domain Name resolves to a website that closely resembles Complainant’s website, including use of the mark HORIZONTAL TALENT and the two logos that appear on Complainant’s website. Respondent’s site also features the same photo of a woman as is featured on the August 11, 2020 screenshot of Complainant’s site.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

##### **B. Respondent**

Respondent did not reply to Complainant’s contentions.

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

The Panel finds that Complainant holds rights in the trademark HORIZONTAL TALENT through use demonstrated in the record, in particular, at Complainant's website. The Panel finds that the Domain Name is confusingly similar to the HORIZONTAL TALENT mark. The dominant word in the mark – "horizontal" – is incorporated entirely into the Domain Name, and the replacement of the other word, "talent", with the word "consulting" does not, in the Panel's view, overcome the impression that the dominant part of Complainant's mark is recognizable within the Domain Name. See also [WIPO Overview 3.0](#), section 1.15. and the Panel's findings under the third element.

Complainant has established Policy paragraph 4(a)(i).

## **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward to dispute Complainant's allegations or articulate some bona fide basis for registering the Domain Name. On the undisputed record, the Panel concludes that Respondent clearly targeted Complainant's mark to generate revenue through consumer confusion between the Domain Name and Complainant's mark. The use of Complainant's mark, logos, and even photos from Complainant's website make this finding of targeting unavoidable. Respondent's use of the Domain Name is clearly illegitimate.

Complainant has established Policy paragraph 4(a)(ii).

## **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates here its discussion above in the "Rights or Legitimate Interests" section. The Panel finds, on this undisputed record and on a balance of probabilities, that Respondent had Complainant and its HORIZONTAL TALENT mark in mind when registering the Domain Name. This is clear from the fact that the Respondent's website uses the word mark HORIZONTAL TALENT and Complainant's logos, and even at least one photo taken from Complainant's site. It is obvious that Respondent has sought to impersonate Complainant's commercial website and mislead consumers looking for Complainant's site. As such, the Panel concludes that Respondent targeted Complainant's mark in order to impersonate Complainant for commercial gain. This use of the Domain Name falls within the above-quoted Policy paragraph 4(b)(iv), and hence constitutes bad faith registration and use of the Domain Name.

Complainant has established Policy paragraph 4(a)(iii).

## **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 Domain Name <horizontalconsulting.com> be transferred to Complainant.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: March 15, 2024