

ADMINISTRATIVE PANEL DECISION

Empower Annuity Insurance Company of America v. Kelvin Parker
Case No. D2024-0844

1. The Parties

The Complainant is Empower Annuity Insurance Company of America, United States of America (“United States”), represented by Polsinelli PC, United States.

The Respondent is Kelvin Parker, United States.

2. The Domain Name and Registrar

The disputed domain name <empowerpersonalasset.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 26, 2024. On February 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 28, 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 amendment to the Complaint on March 4, 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 March 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on April 14, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on April 22, 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 an insurance and financial services company incorporated in Colorado, United States. It is the proprietor of several registrations for its marks that predate the registration of the disputed domain name, including the following:

- United States Trademark Registration No. 5407837 for EMPOWER (device mark), registered on February 20, 2018, for services in classes 35 and 36, claiming a date of first use in 2014;
- United States Trademark Registration No. 5743480 for EMPOWER RETIREMENT (device mark), registered on May 7, 2019, for goods in class 9, claiming a date of first use in 2016.

Additionally, on May 16, 2023, the Complainant registered United States Trademark Registration No. 7056305 for PERSONAL CAPITAL AN EMPOWER COMPANY (word mark), registered in respect of goods and services in classes 9, 16, 35, 36 and 42, claiming a date of first use in 2020.

The Complainant operates its primary business website at the domain name <empower.com>.

The disputed domain name was registered on April 11, 2023. At the time of this Decision, it does not resolve to an active website. The record reflects that it previously resolved to a website that reflected the Complainant's mark through which the Respondent copied the content from the Complainant's website at "www.empower.com" and purportedly offered services identical to those offered by the Complainant.

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 it was initially founded over 130 years ago and has continuously used the EMPOWER marks since at least 2014. The Complainant has over USD 1.2 trillion in assets under administration and manages financial plans for over 70,000 organizations. It has extensively used and promoted its EMPOWER brands. The disputed domain name includes the entirety of the Complainant's well-known EMPOWER mark. The Respondent is not connected to the Complainant. The disputed domain name is similar to the Complainant's PERSONAL CAPITAL trademarks that are often used together with the EMPOWER mark. The Respondent registered the disputed domain name to confuse Internet users by purporting to offer similar services for the likely purpose of accessing customer data or transferring funds.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint 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. 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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant’s EMPOWER 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.

Although the addition of other terms (here, “personal asset”) may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 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 Panel notes there is no evidence that the Respondent has used the disputed domain name in connection with a bona fide offering of goods or services, nor that the Respondent has been commonly known by the disputed domain name. There is no evidence that the Respondent has made a legitimate noncommercial or fair use of the disputed domain name. The use of the disputed domain name reflected in

the evidence does not support an inference that the Respondent was engaged in a legitimate business connected to the disputed domain name. Under these circumstances, the Panel finds that such use does not establish rights or legitimate interests. Moreover, the composition of the disputed domain name, which reflects the Complainant's EMPOWER trademark together with the terms referring to the Complainant's services, carries a risk of implied affiliation to the Complainant that cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Furthermore, panels have held that the use of a domain name for illegal activity (here, claimed impersonation) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. The Respondent has not come forward with any evidence to dispute the Complainant's allegations.

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.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. The disputed domain name was registered several years after the Complainant first registered its EMPOWER mark. The Complainant claims use of its PERSONAL CAPITAL AN EMPOWER COMPANY mark dating from 2020. The disputed domain name reflects the Complainant's registered mark together with terms referring to the Complainant's services, and therefore implies a connection to the Complainant. Additionally, the Respondent used the Complainant's mark on the website at the disputed domain name. Under these circumstances, the Panel finds that the disputed domain name was registered and is being used in bad faith. [WIPO Overview 3.0](#), section 3.1.

UDRP panels have held that the use of a domain name for illegal activity (here, claimed impersonation) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Panel finds that the evidence supports a finding that the Respondent operated a website under the Complainant's mark with the intent of confusing Internet users by copying the content from the Complainant's website at "www.empower.com". Having reviewed the available record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <empowerpersonalasset.com> be transferred to the Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: May 8, 2024