

ADMINISTRATIVE PANEL DECISION

PrideStaff, Inc. v. Brian Cruger
Case No. D2024-1381

1. The Parties

Complainant is PrideStaff, Inc., United States of America (“US”), represented by Frost Brown Todd LLC, US.

Respondent is Brian Cruger, US.

2. The Domain Name and Registrar

The disputed domain name <pridestaffers.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 1, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 2, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on April 3, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 5, 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 Respondent of the Complaint, and the proceedings commenced on April 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 28, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 6, 2024.

The Center appointed Phillip V. Marano as the sole panelist in this matter on May 20, 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 is a California corporation that has provided professional staffing and job placement services throughout the US since 1978. Complainant provides information about its services through its official <pridestaff.com> domain name. Complainant owns a valid and subsisting registration for the PRIDESTAFF trademark in the US (Reg. No. 2,116,589 registered on November 25, 1997 with the use in commerce dating back to March 1, 1995).

Respondent registered the disputed domain name on February 14, 2024. At the time this Complaint was filed, the disputed domain name resolved to website content titled "Pride Staffers" that reads "Your trusted temp staffing partner" and allows visitors to "sign up to be the first to get updates" by providing their email address.

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.

Notably, Complainant asserts ownership of the PRIDESTAFF trademark and has adduced evidence of trademark registration in the US, with the earliest priority dating back to March 1, 1995. The disputed domain name is confusingly similar to Complainant's PRIDESTAFF trademark, according to Complainant, because it incorporates the mark in its entirety and adds the suffix "ers".

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name, and in turn has registered and used the disputed domain name in bad faith, based on: the well-known nature of the PRIDESTAFF trademark in Complainant's industry; the lack of any evidence that Respondent is known by the term "Pride Staffers"; Respondent's use of false or misleading disputed domain name registration data; the lack of any franchise, affiliation, or authorization between Complainant and Respondent; Respondent's passive holding of the disputed domain name; Respondent's use of a proxy registration service to conceal its identity; and Respondent's configuration of the disputed domain name with mail exchange ("MX") records, which implies the disputed domain name may be used for fraudulent email communications or an employment scam.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

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

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and

circumstances of the case, e.g., where a particular conclusion is prima facie obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) (“The Respondent’s default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)”).

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as prima facie evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the PRIDESTAFF trademark has been registered in the US with the use in commerce dating back to March 1, 1995. Thus, the Panel finds that Complainant’s rights in the PRIDESTAFF trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant’s PRIDESTAFF trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant’s PRIDESTAFF trademark because, disregarding the “.com” generic Top-Level Domain (“gTLD”), the entirety of the trademark is contained within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. (“This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar...”). In regards to gTLDs, such as “.com” in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1. As a threshold matter, it is evident from the record that Respondent, identified by Whois data for the disputed domain name as “Brian Cruger”, is not commonly known by the disputed domain name or Complainant’s PRIDESTAFF trademark.

In this Panel’s view, the website content Respondent has associated with the disputed domain name constitutes misappropriation of Complainant’s trademark in connection with putative staffing services in direct competition with Complainant. In this Complaint, Respondent has configured the disputed domain name to resolve to a landing website titled “Pride Staffers” that reads, “Your trusted temp staffing partner” and allows visitors to “sign up to be the first to get updates” by providing their email address, devoid of any information about Respondent or Respondent’s putative services. Respondent has also configured the disputed domain name with MX records, which Complainant has offered a credible argument creates a risk that Respondent is engaged in fraudulent email communications or some other form of fraud.

Considering the above, the Panel finds that Complainant has established a prima facie case that Respondent lacks 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.

In view of the foregoing, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

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

Where a complainant's trademark is widely known, including in a particular industry, or highly specific, and respondents cannot credibly claim to have been unaware of complainant, panels have inferred that respondents knew, or should have known, that their registration would be identical or confusingly similar to a complainant's trademark. Furthermore, where parties are both located in the US and the complainant has obtained a federal trademark registration pre-dating a respondent's domain name registration, panels have applied the concept of constructive notice, subject to the strength or distinctiveness of the complainant's trademark, or circumstances that corroborate respondent's awareness of the complainant's trademark. [WIPO Overview 3.0](#), section 3.2.2. In this Panel's view, when the disputed domain name was registered on February 14, 2024, Respondent had constructive knowledge of Complainant's pre-existing rights in Complainant's PRIDESTAFF trademark under the US law. See, e.g., *Champion Broadcasting System, Inc. v. Nokta Internet Technologies*, WIPO Case No. [D2006-0128](#) (Applying the principle of constructive notice where both parties are located in the US). Indeed, circumstances in this case corroborate Respondent's awareness of Complainant and Complainant's PRIDESTAFF trademark, including Respondent's configuration of the disputed domain name with website content that appears to offer putative "temp staffing" services, ostensibly the same exact services offered by Complainant.

Use of a domain name incorporating Complainant's trademark to redirect Internet users to Respondent's website (where putative services are offered in direct competition with Complainant) is strong evidence of bad faith under paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.4 ("Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: ... seeking to cause confusion ... for the respondent's commercial benefit, even if unsuccessful ... the lack of a respondent's own rights to or legitimate interests in a domain name [or] redirecting the domain name to a different respondent-owned website ..."). Here, the disputed domain name misappropriates Complainant's PRIDESTAFF trademark and resolves to Respondent's website focused on Respondent's putative "temp staffing" services. Accordingly, the Panel finds that use of the disputed domain name will divert potential customers from Complainant's business to the website under the disputed domain name by attracting Internet users who mistakenly believe that the disputed domain name is affiliated with

Complainant, and which may further mistakenly believe that the services offered on this website are those offered by Complainant, or by an entity affiliated to Complainant.

Finally, the Panel considers configuration of an email server on the disputed domain name as additional evidence that the disputed domain name has been registered and used in bad faith. The disputed domain name contains in its entirety Complainant's PRIDESTAFF trademark, and the record is devoid of any evidence to suggest that Respondent has any rights or legitimate interests in the disputed domain name. Conversely, Complainant has made a plausible argument that Respondent's proactive configuration of an email server, creates a risk that Respondent is engaged in a phishing scheme, thereby using an email address associated with Complainant's mark to try to steal valuable sensitive, financial or other confidential information from Complainant's clients or employees. Indeed, this argument is further supported by the lack of any contact information on Respondent's website plus Respondent's invitation to Internet users to submit their emails to "sign up" for undefined information or services. Prior panel determinations have recognized the same risk, and considered it as additional evidence of bad faith. See, e.g., *Accor SA v. Domain Admin, C/O ID#10760, Privacy Protection Service INC d/b/a PrivacyProtect.org / Yogesh Bhardwaj*, WIPO Case No. [D2017-1225](#); *Carrefour S.A. v. WhoisGuard, Inc / Gaudet Jose*, WIPO Case No. [DCO2018-0041](#) ("The Panel concurs with the Complainant that the connection of the disputed domain name with an email server configuration enhances a likelihood of confusion and presents a risk that the Respondent is engaged in a phishing scheme.")

Where it appears that a respondent employs a proxy service, or selects a registrar that applies default proxy services, merely to avoid being contacted by a complainant, or notified of a UDRP proceeding filed against it, UDRP panels tend to find that this supports an inference of bad faith. [WIPO Overview 3.0](#), section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement efforts by a legitimate complainant demonstrates bad faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct). Here, it is evident that Respondent has either intentionally employed a proxy registration service, or intentionally selected a registrar that offers default proxy registration services, to conceal its identity in conjunction with the above-described possible illegal scheme to perpetrate phishing or fraud.

In view of the foregoing, the Panel concludes 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 <pridestaffers.com> be transferred to the Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: June 11, 2024