

ADMINISTRATIVE PANEL DECISION

JanitorAI Inc. v. Windy Wink
Case No. D2024-1444

1. The Parties

The Complainant is JanitorAI Inc., United States of America (“United States”), represented by Minx Law, United States.

The Respondent is Windy Wink, Canada.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2024. On April 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 6, 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 c/o Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 8, 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 April 8, 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 April 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 29, 2024. The Response was filed with the Center on April 28, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on May 27, 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 American company which, through a website and online software, provides a service allowing users to chat with AI chatbots. The Complainant provides its service under the name and sign JANITORAI.

The Complainant's services are provided from the website "www.janitorai.com".

The website features a predominantly gray background fading into purple with purple (the Complaint describes them as ombre) highlights for elements such as buttons, headings and frames around the numerous panels of chatbots. The service appears to be offered for free.

The Complainant's JANITORAI service launched on May 30, 2023. Within the first week it had attracted one million users. Currently, the website services over five million users and features over two million AI "bots". According to the Complaint, the Complainant is ranked in the Top 10 global AI websites. The Complainant also operates an associated Discord with Communities.

The Complainant filed two trademark applications in the United States for JANITORAI on February 4, 2024: Trademark Application No 98392609 and 98392611. Both applications are still pending.

In addition to the Complainant's use of JANITORAI, the Complainant uses a logo (the "JANTORAI Dog Logo") featuring an image of a dog in a bucket with a mop or broom. The word JANITORAI is depicted on the bucket. The Complainant also uses the tag line "Wow Such Bots" in connection with the promotion of its services. According to the Complaint, both the logo and the tag line have been used continuously since the launch of the service on May 30, 2023.

According to the Whols report, the disputed domain name was first registered on June 15, 2023. According to the Response, the Respondent says he "bought" it on that day.

Since about August 2023 (at least), the disputed domain name has resolved to a website. Like the Complainant's website, the Respondent's website also features a predominantly gray background fading into purple, with purple design elements. In addition, the website features the JanitorAI Dog logo above a Menu and the strap line "Wow, such chatbots, such fun!"

Unlike the Complainant's service, in addition to a limited free service, the Respondent's service includes paid memberships including for example a Standard membership for USD 2.74 per month with 1,000 messages per month (up from 50 messages per month for the free account).

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each 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 disputed domain name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules directs the Panel to decide the 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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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.

In the present case, the Complainant does not claim ownership of any registered trademarks. At this stage, the Complainant has pending trademark applications in the United States only. Pending trademark applications are insufficient in themselves for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.1.4. It is therefore necessary for the Complainant to establish rights in an unregistered trademark by demonstrating that the sign put forward by the Complainant has acquired distinctiveness as a badge of origin through use and promotion. See e.g., [WIPO Overview 3.0](#), section 1.3.

While the Complainant's trademark, JANITORAI, is a combination of a common dictionary word and the now commonly understood abbreviation for artificial intelligence, the Panel considers (contrary to the Respondent's contention) that the combination of the two elements is not descriptive of the services the Complainant offers by reference to that trademark. In addition, the Panel finds that it has been sufficiently extensively used by the Complainant and promoted to have acquired the necessary distinctiveness.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademark. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level-Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, therefore, the disputed domain name consists of the Complainant's unregistered trademark and the term "chat". As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See e.g., [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

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

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

While 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 often impossible 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. 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.

It is not in dispute between the parties that the Complainant has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. The Respondent does not claim any trademarks for the disputed domain name.

As noted above, the Respondent is using the disputed domain name in connection with a paid service and, having regard to the manner of that use, paragraph 4(c)(iii) of the Policy is precluded.

The Respondent points out that the word “janitor” is an ordinary English term meaning a person who cleans and maintains buildings such as apartment buildings, offices or schools. The Respondent also points out that the WIPO Global Brand Database features at least 119 results for “‘Janitor’ marks”. The Respondent therefore contends that use of a generic word in a domain name does not violate the Policy and, consequently, as the Respondent was the first to register the disputed domain name, the Respondent has rights or legitimate interests in the disputed domain name.

The Respondent's argument cannot be accepted.

First, it misstates the general position under the Policy with respect to “dictionary” terms. The registration of a dictionary term as a domain name may, or may not, qualify for a finding of rights or legitimate interests in the holder. Whether it does, or does not, will typically depend on how it is being used. So, for example, [WIPO Overview 3.0](#), section 2.10.1 explains:

“Panels have recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term/phrase will not necessarily suffice. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights.

“For example, a hypothetical respondent may well have a legitimate interest in the domain name <orange.com> if it uses the domain name for a website providing information about the fruit or the color orange. The same respondent would not however have a legitimate interest in the domain name if the corresponding website is aimed at goods or services that target a third-party trademark (in this example: Orange, well-known inter alia for telecommunications and Internet services) which uses the same term as a trademark in a non-dictionary sense.

“Panels have assessed cases involving common phrases (whether spelled out or numerical) corresponding in whole or in part to numbers (e.g., 24/7 or 365) in a similar manner as dictionary terms.”

In the present case, the term “janitor” does not appear to the Panel to be an apt descriptor of the Respondent’s service.

Secondly and importantly, the Respondent has not merely registered the dictionary word “janitor” as a domain name. Rather, the Respondent has registered the composite phrase consisting of “janitor”, “AI” and “chat”. Individually, these are dictionary or commonly used terms. However, the evidence before the Panel does not provide any basis for concluding that their combination is a dictionary phrase or expression commonly used with any meaning.

On the contrary, the combination of “janitor” and “AI” is not a commonly used or dictionary term. It is not descriptive of the type of service apparently being offered by both the Complainant and the Respondent. Instead, it appears that the combined term JANITORAI has significance only as the trademark adopted by the Complainant to brand its service.

The addition of the term “chat” (which the Panel accepts is widely used to refer to online communications with other Internet users and, in particular, “bots”) does not change that analysis.

Further, the Respondent registered the disputed domain name after the Complainant began using its trademark.

The use in the disputed domain name of Complainant’s trademark without the Complainant’s permission to offer what appears to be a competing service is at the very least likely to misrepresent that the service available via the disputed domain name is the service of the Complainant or associated in some way with the Complainant. That kind of misrepresentation does not qualify as a good faith offering of goods or services under the Policy.

These matters, taken together, are sufficient to establish a prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name and the Respondent has not rebutted that prima facie case.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Group One Holdings Pte Ltd v. Steven Hafto* WIPO Case No. [D2017-0183](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

In the present case, the Respondent registered the disputed domain name about two weeks after the Complainant launched its service. However, the evidence before the Panel shows that the launch of the Complainant's service under its trademark JANITORAI was very successful, attracting one million users in the first week.

Secondly, for the reasons discussed above, the Panel considers that the term JANITORAI is not a dictionary term. Nor is it descriptive of the services being offered at the respective websites.

Further, the get-up of the Respondent's website very closely approximates the get-up used by the Complainant on the Complainant's website. This includes using the distinctive JANITORAI Dog logo and the Complainant's tag line "Wow, such bots".

Further still, the Respondent has not disputed the Complainant's claim to have launched the Complainant's website in the get-up described above before the date on which the Respondent admits registering the disputed domain name.

In these circumstances, it is most unlikely that the Respondent could have adopted the disputed domain name and developed a website which so closely corresponds in get-up and service to the Complainant's website coincidentally and independently of the Complainant.

Apart from claiming that "janitor" is a dictionary word over which no-one has exclusive rights, the Respondent has not sought to explain how the Respondent came up with the disputed domain name or how the Respondent's website came to resemble the Complainant's website so closely – including the use of the Complainant's JANITORAI Dog log and tag line.

Accordingly, the Panel has no difficulty in finding that the Respondent has both registered and is using the disputed domain name in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

D. Reverse Domain Name Hijacking

Given the Panel finds that the Complaint is successful, the Respondent's plea for a finding of Reverse Domain Name Hijacking under paragraph 15(e) of the Policy does not arise.

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 <janitoraichat.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: June 10, 2024