

ADMINISTRATIVE PANEL DECISION

Vitalant v. Leonar Diders
Case No. D2024-1742

1. The Parties

The Complainant is Vitalant, United States of America (“United States”), represented by Faegre Drinker Biddle & Reath, United States.

The Respondent is Leonar Diders, United States.

2. The Domain Name and Registrar

The disputed domain name <vitalantjobs.org> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 25, 2024. On April 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 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, PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 29, 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 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 May 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 31, 2024.

The Center appointed Martin Schwimmer as the sole panelist in this matter on June 12, 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 Vitalant, one of the nation's largest nonprofit blood and biotherapies healthcare organizations, providing hospitals and patients across the U.S. with a safe blood supply.

The Complainant alleges ownership of four U.S. trademark registrations for the mark VITALANT (the "Trademark"):

- Registration No. 5657555 for the mark VITALANT registered January 15, 2019;
- Registration No. 5729705 for the mark VITALANT and logo, registered April 16, 2019
- Registration No. 5846478 for the mark VITALANT and logo, registered August 27, 2019,
- Registration No. 5927560 for the mark VITALANT and logo, registered December 3, 2019,

All four registrations are in relation to services related to the practice and application of transfusion medicine for blood collection, testing, logistics, and distribution in Classes 35, 36, 39, 40, 41, 42, and 44.

The word VITALANT is the dominant element in the three logo registrations.

The Complainant alleges a date of first use of the Trademark of September 24, 2018. It maintains a website utilizing the domain name "vitalant.org" promoting its blood donor services.

This disputed domain name was registered on April 12, 2024. At this time the disputed domain name resolves to a website depicting keyword advertisements.

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 owns the unique and distinctive VITALANT trademark, at a time prior to any time upon which the Respondent can rely. The Complainant has not authorized the Respondent to utilize the Trademark in any manner. The Respondent has utilized the disputed domain name as part of a phishing scheme in which the Respondent impersonates the Complainant in order to receive personal information from users under the guise of offering them employment with the Complainant. The Complainant learned of the scheme when users contacted the Complainant asking them to verify job offers they had received from the Respondent.

B. Respondent

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

6. Discussion and Findings

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 domain name is confusingly similar to the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms - here, "jobs" - may in some cases, bear on assessment of the second and third elements, the Panel here finds the addition of such term 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, as is the case here, 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.

Panels have held that the use of a domain name for illegal activity here, claimed phishing, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 obtained the disputed domain name for purposes of impersonating the Complainant as part of a phishing scheme.

Panels have held that the use of a domain name for illegal activity, here, claimed phishing, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

As a preliminary point, the Panel notes that the Complainant's trademark, VITALANT, is coined and distinctive. There is unrebutted evidence that the Respondent used the disputed domain name to solicit potential job applicants, allegedly representing itself as the Complainant. Accordingly, the Panel finds that the Respondent was clearly aware of the Complainant prior to registering the disputed domain name. Furthermore, there is documentation that the Respondent corresponded with the deceived "applicants," offered them non-existent jobs, and then solicited personal information. Several "applicants" contacted the Complainant to verify whether the job offers actually originated with the Complainant. This puts beyond doubt that users were confused by the Respondent's deceptive use of the disputed domain name.

As additional evidence of bad faith, the Panel notes that the Respondent has supplied incorrect registration data when registering the mark.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

As the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark, 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 <vitalantjobs.org> be transferred to the Complainant.

/Martin Schwimmer/

Martin Schwimmer

Sole Panelist

Date: June 26, 2024