

ADMINISTRATIVE PANEL DECISION

Capitalsphere, Inc. v. Mark Hebert, Services
Case No. D2024-2236

1. The Parties

The Complainant is Capitalsphere, Inc., United States of America (“United States”), represented by Stradling Yocca Carlson & Rauth, P.C., United States.

The Respondent is Mark Hebert, Services, United States.

2. The Domain Name and Registrar

The disputed domain name <capsph.online> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2024. On June 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 13, 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 (Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 13, 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 June 14, 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 June 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 26, 2024.

The Center appointed Evan D. Brown as the sole panelist in this matter on July 30, 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 in the business of providing financial and capital investment services. It owns the marks CAPITALSPHERE and CAPSPHERE and enjoys the benefits of registration of those marks in the United States (e.g., Reg. No. 4,021,976 and 7,247,034, registered on September 6, 2011 and December 19, 2023, respectively).

According to the Whois information, the disputed domain name was registered on November 14, 2023. The Respondent has used the disputed domain name to set up a website that bears the Complainant's mark (rendered as "CAPITAL SPHERE" with a space between the words) and purports to market and promote wealth management services. The Complainant asserts that it believes the website found at the disputed domain name is being used for phishing or spoofing scams by appearing to be a legitimate financial or banking website operated, maintained, and monitored by the Complainant. The Complainant asserts that it has reason to believe that the Respondent's website is designed and intended to mislead online users into providing their personal and financial information.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. 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. *Id.* This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the CAPITALSPHERE and CAPSPHERE marks by providing evidence of its trademark registrations.

This test for confusing similarity under this element typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. In some cases, such assessment may also entail a more holistic aural or phonetic comparison of the complainant's trademark and the disputed domain name to ascertain confusing similarity. *Id.*

Guided by these principles, the Panel finds that the disputed domain name is confusingly similar to the Complainant's CAPITALSPHERE and CAPSPHERE marks. The disputed domain name is comprised of the first three letters of the two concatenated words comprising the Complainant's CAPITALSPHERE mark and the first six letters of the CAPSPHERE mark. In this way, the Complainant's marks remain sufficiently recognizable for a showing of confusing similarity under the Policy.

The content of the website associated with the domain name is usually disregarded by panels when assessing confusing similarity under the first element. [WIPO Overview 3.0](#), section 1.15. In some instances, however, panels have taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name. The Panel takes note of the content of the Respondent's website to confirm the confusing similarity between the disputed domain name and, in particular, the Complainant's CAPITALSPHERE mark. The website purports to promote services that are very similar to, if not overlapping of, those of the Complainant, and bears the Complainant's mark (that is, slightly modified to add a space between the words "Capital" and "Sphere").

The Panel finds that the Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a prima facie showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts that the Respondent was not authorized by the Complainant to use the Complainant's marks when it registered the disputed domain name. And the Complainant notes that the Respondent is not making a legitimate noncommercial use of the disputed domain name, but appears to use the disputed domain name for nefarious purposes, to misleadingly divert customers and collect personal and financial information.

The Panel finds that the Complainant has made the required prima facie showing. The Respondent has not presented evidence to overcome this prima facie showing. And nothing in the record otherwise tilts the balance in the Respondent's favor.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt 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 a product or service on [the respondent's] website or location".

Given the Respondent's conduct of choosing a domain name confusingly similar to the Complainant's registered mark to set up a website to apparently imitate the Complainant, the Panel finds it more likely than not that the Respondent targeted the Complainant and thereby registered the disputed domain name in bad faith. *BlockFi Inc. v. Jackson Oliver*, WIPO Case No. [D2022-2700](#). The Panel also finds it more likely true than not that the Respondent is using the disputed domain name for phishing purposes or, at least, to benefit unfairly from its confusing similarity with the Complainant's marks. Registering and using a domain name containing a mark confusingly similar to a third party's mark, to imitate that mark owner and to engage in a phishing scheme, is a clear a clear example of bad faith under the Policy. *Id.*

The Complainant has successfully established the third UDRP element.

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 <capsph.online> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: August 11, 2024