

ADMINISTRATIVE PANEL DECISION

CoxHealth v. Taras Kiseliuk
Case No. D2024-3382

1. The Parties

The Complainant is CoxHealth, United States of America (“United States”), represented by Husch Blackwell LLP, United States.

The Respondent is Taras Kiseliuk, Canada.

2. The Domain Name and Registrar

The disputed domain name <coxnet.org> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2024. On August 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 19, 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 (NameCheap, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 19, 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 August 22, 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 August 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 13, 2024.

The Center appointed Nick J. Gardner as the sole panelist in this matter on September 25, 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 a locally owned nonprofit health system in southwest Missouri, United States. It was founded in 1906 and has grown from a single hospital to its network today that includes six hospitals, more than 80 clinics, five emergency rooms, and nearly 14,000 employees.

The Complainant's network of medical centers provides a wide range of treatments and services to the community under the name "CoxHealth". The Complainant's principal website is linked to the domain name <coxhealth.com>. The Complainant has used the name CoxHealth as a trademark (the "COXHEALTH mark") in connection with the provision of medical services and prominently displayed on its website since at least February 2003.

The Disputed Domain Name was registered on October 30, 2020. At the time of this Decision, the Disputed Domain Name resolves to a parking page. The filed evidence shows that it has previously resolved to a website (the "Respondent's Website") which was in large measure a replication of an earlier version of the Complainant's own website.

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 has common law trademark rights in the COXHEALTH mark. It says the Disputed Domain Name is confusingly similar to this mark given it contains the distinguishing element in the mark namely the term "COX" and combines that term with the non-distinguishing term "net".

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 Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. The COXHEALTH mark is distinctive, and the Complainant has used it extensively for over 100 years. The Panel has no doubt that it functions as a source identifier for the Complainant's services in the areas where the Complainant's hospitals and clinics are located. This is reinforced by the fact the Respondent's Website was a replica of an earlier version of the Complainant's own website, which prominently displayed the COXHEALTH mark, and further supports the

Complainant's assertion that its mark has achieved significance as a source identifier. [WIPO Overview 3.0](#), section 1.3.

The Panel finds the first element of the COXHEALTH mark, namely the term "COX" (which the Panel considers as the dominant element of the mark) is recognizable within the Disputed Domain Name and is combined with the term "net". Although the addition of other terms (here "net") may bear on assessment of the second and third elements, the Panel 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. Furthermore, while the trademark is not reproduced in its entirety within the Disputed Domain Name the content of the Respondent's Website at the Disputed Domain Name confirms the confusing similarity as it appears that the Respondent sought to target the Complainant's COXHEALTH mark through the Disputed Domain Name. [WIPO Overview 3.0](#), section 1.15.

Accordingly, the Disputed Domain Name is confusingly similar to the COXHEALTH mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that paragraph 4(b) of the Policy provides that for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location (Policy, paragraph 4(b)).

The Panel finds (given in particular the fact that the Respondent's Website replicated an earlier version of the Complainant's website) that the Respondent was aware of the Complainant and its reputation in the term COXHEALTH at the time the Disputed Domain Name was registered. The Respondent has provided no explanation as to why the Respondent's Website replicated the Complainant's website, and no bona fide reason is conceivable.

The Panel is not however entirely sure which, if any, of the factors listed in paragraph 4(b) of the Policy applies. The Panel is unclear as to the Respondent's exact motives in linking the Disputed Domain Name to a website which was an unauthorized replica of an earlier version of the Complainant's own website.

However, the Panel notes that in any event the list in paragraph 4(b) of the Policy is non exhaustive and takes the view that the registration of the Disputed Domain Name with knowledge of the Complainants' trademark (which the Respondent must have had) is itself evidence of bad faith in the circumstances of the case – see *The Channel Tunnel Group Ltd. v. John Powell*, WIPO Case No. [D2000-0038](#). This is particularly so given that the Respondent has not provided any explanation for his conduct in creating a replica of the Complainant's own website.

The Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly, the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <coxnet.org> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: October 9, 2024