

ADMINISTRATIVE PANEL DECISION

The Presidential Prayer Team v. Intercessors for America Case No. D2024-3465

1. The Parties

The Complainant is The Presidential Prayer Team, United States of America (“United States”), represented by Bhandlaw, PLLC, United States.

The Respondent is Intercessors for America, United States, represented by Simms Showers, LLP, United States.

2. The Domain Name and Registrar

The disputed domain names <praythevote2024.com> and <praythevote2024.org> (the “Disputed Domain Names”) are registered with GoDaddy.com, LLC, (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 25, 2024. On August 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On September 3, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and its contact details.

The Center verified that the 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 September 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2024. The Response was filed with the Center on September 25, 2024.

The Center appointed David H. Bernstein as the sole panelist in this matter on October 2, 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 501(c)(3) charitable organization dedicated to the provision of election information to voters and prayer for U.S. officials. The Complainant previously owned U.S. Trademark Registration No. 2,984,777 for PRAY THE VOTE for “Instruction Services, namely, teaching prospective voters how to vote, explaining the nature of political issues, teaching about community and national election processes, and providing religious instruction in the field of leading and organization prayer gatherings related to elections,” applied for on June 15, 2004, and registered on August 16, 2005.

The Complainant failed to file between the fifth and sixth anniversaries of the registration the necessary declaration under Section 8 of the Lanham Act in order to maintain its registration. In light of the failure to file a Section 8 declaration, the registration lapsed, and was cancelled by the U.S. Patent and Trademark Office (“USPTO”) on September 28, 2012. The Complainant filed a new application to register PRAY THE VOTE as a trademark on July 31, 2024 for the same services as the lapsed registration, and also for “Providing political information about elections.” That application, U.S. Trademark Application Serial No. 98/672,212, is currently pending.

Despite the lapsed registration, the Complainant has offered election-related information and prayer services under the PRAY THE VOTE mark throughout the period since its registration was cancelled. The Complainant has used the mark on its websites “www.praythevote.com” and “www.praythevote.org”, on its social media accounts, in radio spots, and on informational pamphlets. The Complainant also uses a “praying hands” logo on its website and social media accounts.

The Respondent registered the Disputed Domain Names on February 27, 2024, more than a decade after the Complainant’s initial trademark registration was cancelled, and approximately five months before the Complainant filed its application to re-register its trademark.

5. Parties’ Contentions

A. The Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Names.

First, the Complainant alleges that the Disputed Domain Names are confusingly similar to the Complainant’s PRAY THE VOTE trademark. Specifically, the Complainant contends that the Disputed Domain Names incorporate the entirety of the Complainant’s formerly-registered (and newly applied-for) trademark and its common law counterpart, PRAY THE VOTE. The Complainant also notes that the Disputed Domain Names resolve to the same website. Respondent’s website asks visitors to subscribe to emails from “PRAY THE VOTE,” omitting the “2024” found in both Disputed Domain Names, which the Complainant contends confuses internet users as to the source of the website. The Complainant further contends that the Respondent uses a “praying hands” logo on its website that is confusingly similar to the logo the Complainant uses on its website and social media channels. The Complainant contends that the Respondent’s uses of this mark and logo falsely suggest that the Disputed Domain Names, and the website to which they resolve, are connected to the Complainant.

Second, the Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Names. The Complainant asserts that the Respondent is not sponsored by or affiliated with the Complainant, and lacks any permission to use the Complainant's mark or logo. The Complainant argues that the Respondent was not previously known by the Disputed Domain Names either as a business, or as an organization. The Complainant additionally asserts that the Respondent is creating a false association with the Complainant by using the Disputed Domain Names and "praying hands" logo to solicit personally identifying information and donations from visitors to the Respondent's websites. Therefore, the Complainant alleges, the Respondent cannot claim that it is using the Disputed Domain Names in connection with a bona fide offering of goods or services.

Finally, the Complainant alleges that the Respondent registered and is using the Disputed Domain Names in bad faith. In support of these allegations, the Complainant asserts that: (1) the Respondent registered the Disputed Domain Names nearly two decades after the Complainant registered its PRAY THE VOTE trademark in the United States; (2) the Respondent's website lacks any disclaimers of their association with the Complainant; (3) the Respondent's website uses a similar "praying hands" logo despite having been denied permission to use the Complainant's logo; and (4) the Respondent provides similar services to that of the Complainant. The Complainant additionally contends that the Respondent only appended the present year to the Complainant's trademark to trade on the Complainant's good will during an election year, further evidencing its bad faith.

B. The Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the Disputed Domain Names.

First, the Respondent argues that the Complainant lacked any trademark rights in the Disputed Domain Names at the time the Respondent registered the Disputed Domain Names. The Respondent contends that the Complainant lacked any trademark rights because its trademark registration was cancelled more than eleven years before the registration of the Disputed Domain Names. The Respondent also notes that the Complainant only filed a new trademark application in the USPTO after the Respondent registered the Disputed Domain Names. The Respondent further contends that the Complainant lacked any common law trademark rights at the time of the registration of the Disputed Domain Names because, as of February 26, 2024, the Complainant's website had not been updated in sixteen months. The Respondent also contends that the Respondent's president called the Complainant to assess whether it had ceased use of the mark, but no one answered the call and no one returned his voicemail message.

Second, the Respondent asserts that it has rights or legitimate interests in the Disputed Domain Names because, as another 501(c)(3) organization, the Respondent provides informational and prayer services in connection with American elections. The Respondent contends that, through the Disputed Domain Names, it provides information about the upcoming election, voter registration, election integrity, election-day volunteer opportunities, and prayer. The Respondent further contends that it does not operate under a pay-per-click advertisement monetization model, but instead provides a number of resources consistent with its tax-exempt activities and purposes, and which go beyond those provided by the Complainant. Finally, the Respondent contends that its charitable activities are a legitimate noncommercial activity.

Third, the Respondent asserts that it conducted due diligence prior to registering the Disputed Domain Names and determined that the Complainant was no longer using its trademark. That due diligence included determining that the Complainant had allowed its trademark registration to lapse, that the Complainant had not updated its website in approximately sixteen months, and that the Complainant's president did not respond when the Respondent called to inquire about whether the Complainant was still using its trademark. The Respondent argues that its search of the USPTO, investigation of the Complainant's website, and call to the Complainant's president shows that it did not register the Disputed Domain Names in bad faith. Additionally, the Respondent denies ever having authorized a former or current employee to contact the Complainant regarding its "praying hands" logo or other intellectual property prior to March 3, 2024.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following three elements by a preponderance of the evidence to obtain an order that a disputed domain name be transferred:

- (1) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (2) the respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

For the reasons stated below, the Panel finds that the Complainant has not proven all three elements by a preponderance of the evidence.

A. Identical or Confusingly Similar

Although the Complainant has a pending application to register its mark, that pending application is not itself sufficient to prove trademark rights. See WIPO Overview of WIPO Panel Views of Selected UDRP Questions 3.0 ("[WIPO Overview 3.0](#)"), section 1.1.4. Nor is its cancelled registration sufficient to establish trademark rights as of the time of the filing of the Complaint.

Recognizing that its lapsed registration and pending application are not sufficient, the Complainant claims to have common law trademark rights in the mark PRAY THE VOTE by virtue of its decades of use of that mark in connection with informational services. In order to establish common law trademark rights, the Complainant must show that it has used its mark in commerce and that its mark is inherently distinctive or has acquired distinctiveness such that consumers associate the mark with the Complainant's goods and/or services. See [WIPO Overview 3.0](#), section 1.3.

The Complainant cites its website, social media pages, radio spots, voter guides, and print advertisements, all of which reference its PRAY THE VOTE mark, to support its contention that it has consistently and continuously used the mark to advertise and provide its goods and services to the public. The Panel finds that the Complainant has provided sufficient evidence that, through its use of the mark in connection with its educational and informational services and printed materials, the Complainant has demonstrated common law trademark rights in the PRAY THE VOTE mark for purposes of the Policy.

The Disputed Domain Names are identical to the Complainant's mark, save for the addition of the present year (2024) at the end of each Disputed Domain Name. As such, the entirety of Complaint's mark is reproduced in the Disputed Domain Names. "In 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 to that mark for purposes of UDRP standing." [WIPO Overview 3.0](#), section 1.7. See also *International Basketball Federation v. Power Bilgisayar*, WIPO Case No. [D2006-1648](#) (finding confusing similarity between the mark "FIBA" and the domain "fiba2010.com").

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Under section 4(c) of the Policy, a respondent may demonstrate rights or legitimate interests in a domain name by asserting that, before any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services. [WIPO Overview 3.0](#), section 2.1.

A key question here is whether the Respondent's use is "bona fide." To be bona fide, the offering of goods or services must not infringe upon the Complainant's trademark in PRAY THE VOTE. See e.g., *On AG, On Clouds GmbH v. Nguyen Luu, Vuong Hoang, AN NGUYEN, NEO CORP, and Ngoc Tam Nguyen*, WIPO Case No. [D2021-1714](#) ("a use cannot be deemed bona fide if the disputed domain names constitute trademark infringement"). Even if any such infringement is unintentional, a use is not "bona fide" if it is infringing (though issues of intent and knowledge, with respect to paragraph 4(c)(i) of the Policy, may be highly relevant as part of the consideration of the third element of the UDRP). On the facts of this case, the Complainant has a credible argument that the Respondent's use is not "bona fide" given that the Respondent's website is arguably infringing of the Complainant's trademark.

The Respondent also claims that it is making a fair use of the term "PRAY THE VOTE" under paragraph 4(c)(iii) of the Policy ("you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers"). Under this paragraph, intent is relevant. As discussed further below, the Respondent did conduct due diligence and appears to have registered and used the Disputed Domain Names with the subjective belief, even if incorrect, that the Complainant had abandoned its trademark and was no longer actively using PRAY THE VOTE as a trademark. If the Respondent had that belief, it would vitiate any intent to misleadingly divert consumers, which would tend to support an assertion of fair use under the Policy.

Ultimately, the questions of whether the Respondent's use is infringing, and whether the Respondent had a reasonable belief that the Complainant had abandoned its trademark rights, raise difficult and close factual questions that could more accurately be assessed with the benefit of discovery and live testimony, at which credibility determinations could be made. If it were necessary to the adjudication of this dispute for the Panel to decide those issues, it would do so, see *National Association of Realtors v. John Fothergill*, WIPO Case No. [D2010-1284](#) (deciding a "difficult question" whose facts presented a "close case"), but given the Panel's determination as to the Respondent's bad faith, below, the Panel need not grapple with this difficult issue in this case, and accordingly declines to reach this issue.

C. Registered and Used in Bad Faith

The Respondent has provided a detailed explanation of the due diligence it conducted, prior the registration of the Disputed Domain Names, to determine whether the Complainant had abandoned its mark (which had been the subject of a cancelled trademark registration and still appeared in use of the Complainant's websites). The Respondent searched the USPTO Trademark database, where it found that the Complainant's registration had lapsed and was cancelled. The Respondent then examined the Complainant's website, which it found to have been untouched and unchanged in sixteen months. Finally, the Respondent called the Complainant to try to determine whether the Complainant was still using the PRAY THE VOTE mark, and states that it never received any return phone call.

The Respondent's due diligence, although imperfect (for example, the Respondent might more appropriately have hired an investigator to assess whether the Complainant had in fact abandoned its trademark rights or to assess its organizational status through public records), supports the Respondent's claim that it registered the Disputed Domain Names only after determining that the Complainant had abandoned its trademark rights. That due diligence further supports the Respondent's claim that it did not register the Disputed Domain Names in a bad faith intent to deceive consumers, to disrupt the business of a competitor, or to sell the Disputed Domain Names to the Complainant at a premium price. Although it is possible that this imperfect due diligence was designed to willfully turn a blind eye towards the Complainant's trademark rights, there is nothing in the record as submitted to the Panel that would support such a finding by a preponderance of the evidence. As such, on the limited record before the Panel, the Complainant has not succeeded in proving, by a preponderance of the evidence, that the Respondent registered the Disputed Domain Names in bad faith

The record is also insufficient to demonstrate that the Respondent's use of the Disputed Domain Names is in bad faith. The look and feel of the Respondent's website is not so similar to that of the Complainant's websites so as to suggest a bad faith attempt to confuse consumers or otherwise capitalize upon the

Complainant's good will. Although the Complainant complains about the Respondent's use of a "praying hands" logo, the use of two hands held together in prayer is ubiquitous in connection with religious imagery, and the logo used by the Respondent is different enough such that it does not evince bad faith copying or deception. The Complainant has not established that the Respondent tried to purchase the Complainant's specific "praying hands" logo; on this point, the parties have submitted competing declarations, and in the absence of supporting evidence from either side, the Panel is unable to find that the Complainant has proven this fact by a preponderance of the evidence. Nor is the copyright notice (which references "Pray the Vote," which the Respondent understood to no longer be a trademark of the Complainant) or the lack of disclaimers (why disclaim a lack of affiliation with a prior trademark owner whom one believed to have abandoned its rights?) indicative of bad faith use. Given the dissimilarity of the look and feel of the parties' websites, the Complainant has not shown that the Respondent copied aspects of the Complainant's websites in a way that would support a finding of bad faith use.

Accordingly, the Panel finds that the Complainant has failed to establish the third element of the Policy.

7. Decision

For the forgoing reasons, the Complaint is denied.

/David H. Bernstein /

David H. Bernstein

Sole Panelist

Date: October 16, 2024