

ADMINISTRATIVE PANEL DECISION

Tivity Health, Inc. v. Loren Shook
Case No. D2024-4312

1. The Parties

Complainant is Tivity Health, Inc., United States of America (“U.S.A.”), represented by Foley & Lardner, U.S.A.

Respondent is Loren Shook, U.S.A.

2. The Domain Name and Registrar

The disputed domain name <tivityhealths.com> (the “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 October 21, 2024. On October 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 22, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on October 23, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant did not submit an amendment to the Complaint.

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 Respondent of the Complaint, and the proceedings commenced on November 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 22, 2024.

The Center appointed Harrie R. Samaras as the sole panelist in this matter on November 29, 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

Complainant owns various U.S.A. trademark registrations, including: Registration Nos. 5,586,942 (registered October 16, 2018) and 5,751,761 (registered May 14, 2019) for the TIVITY HEALTH Mark or the "Mark". Among other things, it uses the Mark in connection with its careers and related job posting webpages located at "www.tivityhealth.com/careers" and "www.careers-tivityhealth.icims.com".

The Domain Name, which was registered on September 9, 2024, does not resolve to an active website. Complainant contends, without rebuttal from Respondent, that Respondent is sending deceptive emails to individuals under the guise of offering employment opportunities with Complainant. That is, Complainant has received notifications from individuals who were approached by an entity using an email address associated with the Domain Name, claiming to be a "Recruitment Manager" for Complainant. Complainant represents that it does not employ an individual named the same as the purported "Recruitment Manager" in any capacity. According to Complainant, the emails invite recipients to apply for a non-existent "Remote Administrative Assistant" position and schedule interviews (e.g., to obtain personal and sensitive information such as social security numbers, financial details, and other confidential data from them).

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name. Complainant argues that by including the letter "s" at the end of the Mark, the Domain Name is an intentional typosquatting of the Mark and Complainant's own domain name. Thus, it is identical or at least confusingly similar to the Mark and is likely to deceive customers and job applicants into erroneously believing that Respondent is endorsed by or affiliated with Complainant.

Respondent does not have any rights or legitimate interests with respect to the Domain Name because: (1) there is no evidence of Respondent's use of, or 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; (2) there is no evidence that Respondent has been commonly known by the Domain Name; and (3) there is no evidence that Respondent is making a legitimate, noncommercial or fair use of Domain Name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark rights of Complainant.

Respondent is using the Domain Name to facilitate fraudulent activities (as described above). This conduct demonstrates that Respondent is using the Domain Name to intentionally attract Internet users for commercial gain by creating a likelihood of confusion with the Mark.

The Domain Name does not resolve to an active website, and there is no evidence that Respondent is using it for any legitimate business purpose or bona fide offering of goods or services. The passive holding of a domain name that incorporates a well-known trademark, combined with evidence of fraudulent use, supports a finding of bad faith registration and use under the Policy.

Respondent's actions have the potential to cause significant harm to the public, including identity theft and financial loss. By impersonating Complainant and offering fake employment opportunities, Respondent is misleading individuals into divulging personal information. This not only endangers the victims but also damages Complainant's reputation and goodwill in the marketplace.

B. Respondent

Respondent did not reply to 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.

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 entirety of the Mark is reproduced within the Domain Name. Accordingly, the Domain Name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although adding the letter "s" at the end of the TIVITY HEALTH Mark may bear on assessment of the second and third elements, the Panel finds the addition of the letter does not prevent a finding of confusing similarity between the 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, 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegitimate activity as described above, including, possible phishing and impersonation/passing off, 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 Respondent: (1) registered the Domain Name after Complainant had established its rights in the Mark; (2) has not shown rights or legitimate interests in the Domain Name; (3) registered a domain name that uses the entirety of the Mark simply adding the letter “s” to the end of it; (4) registered a domain name that is similar to Complainant’s own domain name; and (5) was purportedly using the Domain Name in a scheme that was intended to impersonate Complainant and its job recruitment efforts for untoward purposes. For all of these reasons the Panel finds it more likely than not that Respondent registered the Domain Name in bad faith knowing of Complainant and its rights in the Mark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a page with the message: “Hmmm... can’t reach this page [...] tivityhealths.com refused to connect”) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of Complainant’s Mark, and the composition of the Domain Name, and finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

Panels have held that the use of a domain name for illegitimate activity as described above, including, possible phishing and impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent’s registration and use of the Domain Name constitutes bad faith under the Policy.

The Panel finds that 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 Domain Name <tivityhealths.com> be transferred to Complainant.

/Harrie R. Samaras/

Harrie R. Samaras

Sole Panelist

Date: December 6, 2024