

ADMINISTRATIVE PANEL DECISION

Evergreen Nephrology LLC v. Name Redacted

Case No. DCO2022-0116

1. The Parties

Complainant is Evergreen Nephrology LLC, United States of America (“United States”), represented by Hitchcock Evert LLP, United States.

Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name <evergreennephrology.co> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 15, 2022. On December 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 16, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on December 19, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 27, 2022.

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”).

¹ Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on January 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2023. Respondent did not submit any response. Accordingly, the Center notified the Parties of Respondent's default on January 26, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on February 1, 2023. 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 provides financial, technology and consulting resources to nephrology (kidney) specialists under the name "Evergreen Nephrology". It operates its primary business website at the domain name <evergreennephrology.com>.

The disputed domain name was registered on September 22, 2022. At the time of this Decision, it did not resolve to an active website. The record contains evidence that it previously had redirected Internet users to Complainant's website.

5. Parties' Contentions

A. Complainant

Complainant's contentions may be summarized as follows:

Under the first element, Complainant asserts unregistered trademark rights in the mark EVERGREEN NEPHROLOGY. Complainant states that, since its founding only 18 months ago, Complainant has quickly become a leading provider of financial, technology and consulting resources to nephrology specialists, partnering with health plans, physicians, and other organizations to improve quality of life for patients suffering from chronic kidney disease, their families, and their physicians. The disputed domain name is identical to Complainant's mark.

Under the second element, Complainant states that Respondent registered the disputed domain name to perpetuate cybercrimes and to conceal its intent by redirecting the disputed domain name to Complainant's legitimate website. Complainant has obtained information that Respondent had posed as a representative of Complainant and had communicated with a third party in the guise of offering employment to that person. Respondent is not making a legitimate noncommercial use of the disputed domain name.

Under the third element, Complainant states that Respondent had targeted Complainant by assuming the identity of one of Complainant's employees and providing false information when registering the disputed domain name. Respondent is perpetuating a scheme to obtain sensitive personal and financial information from unsuspecting job applicants. Complainant has reported these activities to law enforcement authorities.

Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

As a threshold matter, the Panel must decide whether Complainant has standing to bring a UDRP action based on unregistered trademark rights.

Complainant must establish that it has rights in a trade or service mark, and that the disputed domain name is identical or confusingly similar to that mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), Section 1.1. See also *Digital Vision, Ltd. v. Advanced Chemill Systems*, WIPO Case No. [D2001-0827](#). Paragraph 4(a)(i) does not require that a trademark be registered prior to the disputed domain name, but only that the relevant trademark rights be in existence at the time of filing of the Complaint. See [WIPO Overview 3.0](#), Section 1.1.3.

Based on the evidence presented, the Panel finds that Complainant has established its unregistered rights in the EVERGREEN NEPRHOLOGY mark. The Panel finds that the mark does not consist solely of descriptive terms. The Panel finds that Complainant has provided evidence of use of this mark on its website that predates the registration of the disputed domain name and that supports its assertion of rights in an unregistered mark. See, for example, *Uitgeverij Crux v. W. Frederic Isler*, WIPO Case No. [D2000-0575](#). See also [WIPO Overview 3.0](#), section 1.3.

Consistent with prior UDRP panel practice, the Panel finds that Respondent has deliberately targeted Complainant’s mark, and this fact supports a finding that Complainant’s mark has achieved significance as a source identifier. See [WIPO Overview 3.0](#), section 1.3.

Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. In comparing the disputed domain name to Complainant’s mark, the Panel finds that they are identical. It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. [WIPO Overview 3.0](#), section 1.7.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, respondent’s use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or

- (ii) respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In the absence of a Response, the Panel must make its determination based on the information in the record. The Panel finds that there is no evidence that Respondent is commonly known by the disputed domain name or is using the EVERGREEN NEPHROLOGY mark with the permission of Complainant. The nature of the disputed domain name cannot constitute fair use since it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See, for example, *Ifscience Limited v. Domains By Proxy LLC / Dr Chauncey Siemens*, WIPO Case No. [D2016-0909](#); and *B&B Hotels v. WhoisGuard Protected, WhoisGuard, Inc. / Soro Wonna*, WIPO Case No. [D2020-2837](#). See also [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

Respondent, in failing to file a response, has not submitted any evidence or arguments demonstrating such rights or legitimate interests, nor has it rebutted any of Complainant's contentions. The circumstances of the case prevent the inference of rights nor legitimate interests on the part of Respondent. The use of the disputed domain name to effect identity theft can never support a finding of rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.13.1.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Complainant has demonstrated Respondent's bad faith registration of the disputed domain name. Complainant provides evidence that its rights in the EVERGREEN NEPHROLOGY mark predates the registration of the disputed domain name. The disputed domain name is identical to Complainant's mark and to Complainant's own domain name. Under such circumstances, the Panel finds that the registration of the disputed domain name that is identical or confusingly similar to a distinctive trademark by an unaffiliated entity can by itself create a presumption of bad faith on the part of Respondent. See [WIPO Overview 3.0](#), section 3.1.4. Respondent has not provided any information that would rebut this presumption.

The Panel also finds that Complainant has demonstrated Respondent's bad faith use of the disputed domain name. The evidence provided by Complainant indicates that Respondent was perpetuating a deceptive scheme by using the disputed domain name to deceive persons seeking employment with Complainant by impersonating Complainant's employee and by using the disputed domain name to redirect to Complainant's own website. Consistent with UDRP panel practice, such conduct manifestly demonstrates bad faith. See [WIPO Overview 3.0](#), section 3.4.

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) 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 <evergreenephrology.co> be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: February 15, 2023