



DECISION

Cosmic Patterns Software, Inc. v. tian qin lei

Claim Number: FA2201001981716

PARTIES

Complainant is **Cosmic Patterns Software, Inc.** (“Complainant”), represented by **Daniel R. Prince** of **Epik Holdings, Inc.**, Washington, USA. Respondent is **tian qin lei** (“Respondent”), China.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<patterns.com>**, (‘the Domain Name’) registered with **Bizcn.com, Inc.**

PANEL

The undersigned certifies that she has acted independently and impartially and to the best of her knowledge has no known conflict in serving as Panelist in this proceeding.

Dawn Osborne as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on January 24, 2022; the FORUM received payment on January 24, 2022. The Complaint was received in English.

On January 27, 2022, Bizcn.com, Inc. confirmed by e-mail to the FORUM that the **<patterns.com>** Domain Name is registered with Bizcn.com, Inc. and that Respondent is the current registrant of the name. Bizcn.com, Inc. has verified that Respondent is bound by the Bizcn.com, Inc. registration agreement and has

thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On February 2, 2022, the FORUM served the English language Complaint and all Annexes, including a Chinese and English language Written Notice of the Complaint, setting a deadline of February 22, 2022 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@patterns.com. Also on February 2, 2022, the Chinese and English language Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

Having received no response from Respondent, the FORUM transmitted to the parties a Notification of Respondent Default.

On February 28, 2022 pursuant to Complainant's request to have the dispute decided by a single-member Panel, the FORUM appointed Dawn Osborne as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the FORUM'S Supplemental Rules and any rules and principles of law that

the Panel deems applicable, without the benefit of any response from Respondent.

RELIEF SOUGHT

Complainant requests that the Domain Name be transferred from Respondent to Complainant.

PRELIMINARY ISSUE: LANGUAGE OF PROCEEDING

Pursuant to UDRP Rule 11(a), the Panel finds that persuasive evidence has been adduced by Complainant to suggest the likely possibility that the Respondent is conversant and proficient in the English language. After considering the circumstance of the present case, the Panel decides that the proceeding should be in English.

PARTIES' CONTENTIONS

A. Complainant

Complainant's contentions can be summarised as follows:

Complainant has common law rights in the PATTERNS mark based upon use of the mark in commerce for astrological software services for over twenty years.

The Domain Name is identical to Complainant's PATTERNS marks for the purposes of the Policy coupled only with the gTLD ".com". Complainant previously owned the Domain Name before Respondent fraudulently acquired it in November 2020 via a deception perpetrated on the Complainant's registrar.

Accordingly Respondent does not have rights or legitimate interests in the Domain Name. Respondent offers the Domain Name for sale. The Domain Name is currently being used for pay per click links. Respondent registered and uses the Domain Name in bad faith following its fraudulent acquisition.

B. Respondent

Respondent failed to submit a Response in this proceeding.

FINDINGS

Complainant has common law rights in the PATTERNS mark based upon use of the mark in commerce for astrological software services for over twenty years.

The Domain Name fraudulently acquired in November 2020 has been used for pay per click links and offered for sale generally.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) 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.

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the

Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. *See* WIPO Jurisprudential Overview 3.0 at ¶ 4.3; *see also eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire*, FA 157287 (FORUM June 26, 2003) (“Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint”).

Identical and/or Confusingly Similar

Complainant has common law rights in the PATTERNS mark based upon use of the mark in commerce for astrological software services for over twenty years.

The Domain Name consists of the Complainant’s PATTERNS common law trade mark and the gTLD “.com”.

The gTLD “.com” does not serve to distinguish the Domain Name from the Complainant’s PATTERNS mark. *See Red Hat Inc. v. Haecke*, FA 726010 (FORUM July 24, 2006) (concluding that the redhat.org domain name is identical to the complainant's red hat mark because the mere addition of the gTLD was insufficient to differentiate the disputed domain name from the mark).

Accordingly, the Panel holds that the Domain Name is identical for the purpose of the Policy to a mark in which the Complainant has rights.

Rights or Legitimate Interests

The Respondent is not authorized by the Complainant and does not appear to be commonly known by the Domain Name. *See Alaska Air Group, Inc. and its subsidiary, Alaska Airlines v. Song Bin*, FA1408001574905 (FORUM Sept. 17, 2014) (holding that the respondent was not commonly known by the disputed domain name as demonstrated by the WHOIS information and based on the fact

that the complainant had not licensed or authorized the respondent to use its ALASKA AIRLINES mark).

The Domain Name containing the Complainant's mark has been offered for sale generally which is not a bona fide offering of goods or services or a legitimate noncommercial or fair use. See *Twentieth Century Fox Film Corporation v. Diego Ossa*, FA1501001602016 (FORUM Feb. 26, 2015).

The Respondent has used the page attached to the Domain Name to link to commercial pay per link links offering services not connected with the Complainant. See *Ferring B.V. v. Shanshan Huang / Melissa Domain Name Services*, FA1505001620342 (FORUM July 1, 2015) ("Placing unrelated third party links for the benefit of a respondent indicates a lack of a bona fide offering of goods or services, and a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(i) and Policy ¶ 4(c)(iii), respectively.").

The Domain Name has been acquired fraudulently through a deception perpetuated on the Complainant's registrar. Where a domain name has been obtained improperly this is indicative of a lack of both rights and legitimate interest. See *RGF Environmental Group, Inc. v. WHOIS AGENT / WHOIS PRIVACY PROTECTION SERVICE, INC.*, FA 1702001719208 (FORUM Apr. 5, 2017),

The Respondent has not answered this complaint and has not explained why it should be entitled to the Domain Name.

As such the Panel finds that the Respondent does not have rights or a legitimate interest in the Domain Name and that the Complainant has satisfied the second limb of the Policy.

Registration and Use in Bad Faith

The Domain Name has been acquired by the Respondent pursuant to a fraud upon the Complainant's registrar. In another case of a domain name containing an unregistered trade mark that was acquired pursuant to a fraud the panel ordered transfer of the domain name on the basis that the domain name had been registered and used in bad faith. See *RGF Environmental Group, Inc. v. WHOIS AGENT / WHOIS PRIVACY PROTECTION SERVICE, INC.*, FA 1702001719208 (FORUM Apr. 5, 2017),

The Domain Name containing the Complainant's mark has been offered for sale generally. See *Capital One Financial Corp. v. haimin xu*, FA 1819364 (FORUM Jan. 8, 2019) ("A general offer to sell a domain name can be evidence the respondent intended to make such an offer at the time it registered the name, supporting a finding of bad faith per Policy ¶ 4(b)(i).").

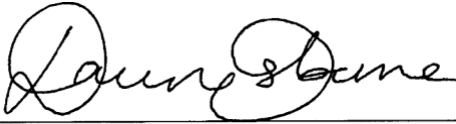
Respondent is using the Domain Name to point to commercial pay per click links. Use for pay per click links indicates bad faith being disruptive of the Complainant's business and diverting customers for commercial gain. See *Plain Green, LLC v. wenqiang tang*, FA1505001621656 (FORUM July 1, 2015) (finding that the respondent's use of the disputed domain name to feature generic third-party hyperlinks constituted bad faith).

As such, the Panel holds that the Complainant has made out its case that the Domain Name was registered and used in bad faith primarily for the purposes of profit and has satisfied the third limb of the Policy.

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <patterns.com> domain name be **TRANSFERRED** from Respondent to Complainant.

A handwritten signature in cursive script that reads "Dawn Osborne". The signature is written in black ink and is positioned above a horizontal line.

Dawn Osborne, Esq.
Arbitrator

Dawn Osborne, Panelist

Dated: February 28, 2022