Decision for dispute CAC-UDRP-101663

Case number	CAC-UDRP-101663
Time of filing	2017-09-15 11:13:08
Domain names	apollo.education

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Apollo Education Group, Inc

Complainant representative

Organization	RODENBAUGH LAW

Respondent

Name	Christopher Nyren

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

According to the trademark certificates that were provided, the Complainant owns the following American trademarks:

APOLLO GLOBAL, Reg. No. 4495043, registered on March 11, 2014, App. Date May 12, 2009, Date of First Use September 20, 2013
APOLLO EDUCATION GROUP, Reg. No. 4782274, registered on July 28, 2015, App. Date August 8, 2012, Date of First Use May 14, 2015
APOLLO EDUCATION GROUP, Reg. No. 4769552, registered on July 7, 2015, App. Date November 12, 2013, Date of First Use May 14, 2015
APOLLO EDUCATION GROUP, Reg. No. 4769553, registered on July 7, 2015, App. Date November 12, 2013, Date of First Use May 14, 2015
APOLLO ACE, Reg. No.5219334, registered on June 06, 2017, App. Date December 1, 2015, Date of First Use April 6, 2017

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

I. INTRODUCTION

This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy), approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) currently in effect, and the Czech Arbitration Court Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules) currently in effect.

II. THE PARTIES

A. THE COMPLAINANT

The Complainant in this administrative proceeding is Apollo Education Group, Inc.

B. THE RESPONDENT

The Registrant is Mr. Christopher Nyren. According to his LinkedIn profile, he was Vice President of the Apollo Group in charge of development and global strategy from February 2007 until December 2010. After leaving the Apollo Group, he created Educelerate. He registered the domain name <educelerate.com> on February 29, 2012 and uses it to resolve to a website that advertises about the Apollo Group and at the same time invites to meet in Chicago. He also registered the disputed domain name on October 8, 2014 and redirects it to the website www.educelerate.com.

III. FACTUAL BACKGROUND

Apollo Education Group, Inc. (“Apollo” or “Complainant,” fka Apollo Group, Inc.) is a United States company that was incorporated in 1981. Apollo has pioneered higher education for the working learner through its educational subsidiaries including University of Phoenix, Inc., Western International University, Inc. and internationally through the foreign educational institutions held by the Apollo subsidiary Apollo Global, Inc. Apollo’s schools offer quality academic programs, qualified faculty, and a comprehensive student experience that enables Apollo’s schools to be respected institutions of higher education. As a result of its extensive and progressive learning methodologies, many of Apollo’s schools and institutions throughout the world are accredited by prestigious local accrediting bodies within their respective geographic or programmatic areas of instruction.

Apollo has used its APOLLO-formative trademarks continually in commerce in association with various educational services since at least as early as November 4, 2011.

According to the trademark certificates that were provided, the Complainant owns the following American trademarks:

APOLLO GLOBAL, Reg. No. 4495043 , registered on March 11, 2014, App. Date May 12, 2009, Date of First Use September 20, 2013
APOLLO EDUCATION GROUP, Reg. No. 4782274, registered on July 28, 2015, App. Date August 8, 2012, Date of First Use May 14, 2015
APOLLO EDUCATION GROUP, Reg. No. 4769552, registered on July 7, 2015, App. Date November 12, 2013, Date of First Use May 14, 2015
APOLLO EDUCATION GROUP, Reg. No. 4769553, registered on July 7, 2015, App. Date November 12, 2013, Date of First Use May 14, 2015
APOLLO ACE, Reg. No.5219334, registered on June 06, 2017, App. Date December 1, 2015, Date of First Use April 6, 2017

Additionally, Apollo maintains a robust online presence via its own website which is located at <apollo.edu> (“Complainant’s Website””). Complainant’s Website consists of a blue and black banner that prominently displays the APOLLO EDUCATION GROUP trademark, and features links that allow users to learn more about Apollo and its brands. Below the banner the website is mainly white with black text. Id. As early as 2012, Complainant’s Website clearly promoted the APOLLO GROUP brand in connection with Complainant’s broad range of educational services.

Through such longstanding and continual use by Complainant, the APOLLO family of marks is well known both in the United States and throughout the world. Apollo has invested copious amounts of time and money in growing its family of APOLLO-formative marks. As such, consumers around the world have come to associate Apollo with those marks.

Respondent does not have, and never has had, permission to use or to register any APOLLO trademarks or domain names.

The Respondent was employed by Complainant as the Vice President of Corporate Development & Global Strategy from February 2007 to December 2010.
The Disputed Domain currently redirects users to a page within a website located at the <educelerate.com> domain, a domain which is also owned by Respondent. The Infringing Page is mainly white with black text, containing a blue and black banner at the top of the page. Directly under the banner the Infringing Page prominently displays the text “Apollo in Education” in large, bolded text. Id. The Infringing Page also displays text stating, “Apollo has a long and global history in the education markets, including the following groups:” and proceeds to list eight Apollo-formative brands with a brief description of the services, including, APOLLO COLLEGE, APOLLO GROUP, APOLLO, APOLLO INTERACTIVE, APOLLO EDUCATION, APOLLO EDUCATION AND TRAINING, APOLLO HOSPITALS EDUCATION AND RESEARCH TRUST, APOLLO ENGINEERING COLLEGE. The section of the Infringing Page devoted to ‘Apollo Group’ displays a logo that is essentially identical to Complainant’s own APOLLO EDUCATION GROUP mark (featured at the top of Complainant’s website, see Footnote 2), merely omitting the term ‘education’. Id. Directly next to the logo, the Infringing Page displays text that states: “Apollo Group was the former parent company for the University of Phoenix founded by Dr. John Sperling.” Id. The Infringing Page also displays an “Apollo Education” logo, which is highly similar to Complainant’s APOLLO EDUCATION GROUP mark, merely omitting the term ‘group’. Id. Directly next to the logo, the page displays text that states: “Apollo Education part of The Apollo Group, a construction and property services group in the UK, focused on the education sector”. Id. The bottom of the page contains text that reads, “A special thank you to Shane Dunceford for help with this page”.
On June 1, 2015, and August 24, 2015, Mr. Lunceford, sent emails to Respondent requesting Respondent transfer the Disputed Domain to Complainant -- in an effort to avoid legal proceedings.

Complainant has received no response from Respondent.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant presented the following argumentation in the Complaint:

A. THE DISPUTED DOMAIN IS CONFUSINGLY SIMILAR TO A TRADEMARK IN WHICH THE COMPLAINANT HAS RIGHTS

The burden to establish confusing similarity is low. Here, a simple comparison of the APOLLO GLOBAL mark and the Disputed Domain demonstrates that the Disputed Domain is confusingly similar, and almost identical to the APOLLO GLOBAL mark. To be sure, aside from the top-level domain ‘.education’, which may be disregarded for the purposes of this analysis (discussed infra), the Disputed Domain consists entirely of term ‘Apollo’, which is identical to the most distinctive and recognizable part of the APOLLO GLOBAL (and APOLLO RESEARCH INSTITUTE and APOLLO EDUCATION GROUP) mark.

Thus, a side-by-side comparison of the <apollo.education> domain name with Complainant’s APOLLO’s family of relevant marks demonstrates that the Disputed Domain is identical to the most distinctive and dominant portion of Complainant’s marks and therefore is confusingly similar. Further the use of the ‘.education’ gTLD only serves to increase similarity as it makes clear references to the industry in which Complainant operates.

Therefore, the Complainant argues that it has established the first element of the Policy under paragraph 4(a).

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN

The second element of a UDRP claim only requires that the complainant make a prima facie showing that respondent lacks a right or legitimate interest in the disputed domain name. Once a complainant has made such a showing, the burden shifts to the respondent to demonstrate that it has rights or legitimate interest in the disputed domain name. In this case, Respondent has no rights or legitimate interest in the Disputed Domain. Respondent not only registered the Disputed Domain after Complainant's rights in the APOLLO marks arose, but is using the Disputed Domain to redirect Internet users to its own infringing www.educelerate.com website, thereby directly profiting from Complainant's goodwill in the APOLLO GLOBAL and APOLLO Family of Marks. Conversely, Complainant has demonstrated longstanding, exclusive use of the APOLLO Family of Marks, and thus Complainant's rights predate any registration or use of the Disputed Domain by Respondent by many years.

In considering whether a respondent has a right or legitimate interest in a disputed domain under Paragraph 4(c) the panel may consider:
(i) whether the respondent is using the disputed domain in connection with a bona fide offering of goods or services;
(ii) whether the Respondent is commonly known by the disputed domain; and (iii) whether the respondent is making a legitimate noncommercial use or fair use of the disputed domain.

Here, Respondent has no right or legitimate interest in the Disputed Domain and is only using the Disputed Domain to redirect Internet users to the Educelarate.com website in order to profit from Complainant's goodwill and confusing consumers as to the source and/or sponsorship of the Infringing Page.

RESPONDENT DOES NOT USE, AND HAS NOT USED, THE DISPUTED DOMAIN IN CONNECTION WITH A BONA FIDE OFFERING OF GOODS OR SERVICES

Use of the Disputed Domain to commercially benefit from Complainant's goodwill does not demonstrate any bona fide offering of goods or services. Even if Respondent is providing some type of education related service through the www.educelerate.com website (which, based on the available evidence, is highly unlikely), he is only doing so via the unauthorized use of Complainant's marks and/or confusing facsimiles thereof.

Respondent, therefore, is not providing a bona fide offering of goods and services in connection with the Disputed Domain, but rather directly benefitting from Complainant's goodwill when Respondent uses Complainant's APOLLO GLOBAL and APOLLO Family of Marks in connection with promoting and marketing Educelerate.com materials.

RESPONDENT IS NOT COMMONLY KNOWN BY THE DISPUTED DOMAIN

The Respondent is an individual that goes by the name "Christopher Nyren". Respondent is known to Complainant because he is a former employee who ceased working for Complainant on or about December 2010. Since Respondent is a former employee who has never been, and is not now, known by any name containing the term 'Apollo' (but rather, knows the value of the APOLLO GLOBAL mark and the importance of Apollo's businesses in education markets) it is reasonable to conclude that Respondent is using the Disputed Domain to attempt to profit from Complainant's goodwill.

RESPONDENT DOES NOT USE THE DISPUTED DOMAINS FOR ANY LEGITIMATE OR NONCOMMERCIAL FAIR USE

The use of a disputed domain to confuse or divert Internet traffic is not a legitimate use of a domain name. Such actions, demonstrate that Respondent is attempting to divert Internet traffic to its own www.educelerate.com in order to promote and market Respondent's own services. Such use does not constitute a legitimate or non-commercial fair use, but rather infringing use.

Apollo has met its burden to make a prima facie showing that the Respondent has no right or legitimate interest in the

Disputed Domain. Therefore, the burden shifts to the Respondent to rebut Complainant's showing. The evidence, however, demonstrates that Respondent lacks any rights or legitimate interest in the Disputed Domain and will not be able to establish his burden.

C. THE DISPUTED DOMAIN WAS REGISTERED AND IS BEING USED IN BAD FAITH

RESPONDENT REGISTERED THE DISPUTED DOMAIN PRIMARILY FOR THE PURPOSE OF DISRUPTING COMPLAINANT'S BUSINESS

The use of an identical or confusingly similar domain to promote third party products, services and websites that compete with those of Complainant can only be construed as an effort to disrupt Complainant's business.

RESPONDENT WAS AWARE OF APOLLO'S RIGHTS IN THE APOLLO GLOBAL MARK AND REGISTERED THE DISPUTED DOMAIN IN BAD FAITH

The Disputed Domain was created more than five years after Complainant applied for the APOLLO GLOBAL mark on May 12, 2009 (Reg. No. 4436785), and more than three years after Complainant applied for, began using, and registered the APOLLO RESEARCH INSTITUTE mark for educational services. As a former employee of Complainant, Respondent had direct knowledge of Complainant's marks and rights therein. Respondent's use of the APOLLO mark suggests, therefore, that Respondent was acutely aware of Complainant's rights and undertook his unauthorized registration and use of the Disputed Domain in a deliberate attempt to infringe Complainant's rights.
Thus, it is clear that Respondent knowingly registered and has used the Disputed Domain to not only confuse customers as to the source of the Infringing Page and www.educelerate.com, but also to disrupt Complainant's business, evidencing Respondent's bad faith use and registration of the Disputed Domain.

RESPONDENT INTENTIONALLY DIVERTS INTERNET USERS BY CREATING LIKELIHOOD OF CONFUSION

A Respondent has registered and/or used a domain name in bad faith where the purpose of the registration is to confuse consumers as to the source of the website. Under Paragraph 4(b)(iv) the Panel may make a finding that the registrant has registered and used a domain name in bad faith where "by using the domain name, [the registrant has] intentionally attempted to attract, for commercial gain, Internet users to [its] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [registrant's] web site or location or of a product or service on [registrant's] web site or location."

Respondent is clearly attempting to create a likelihood of confusion as to the source, sponsorship, affiliation and/or endorsement of the Infringing Page. While the use of the most distinctive portion of the APOLLO GLOBAL (and APOLLO EDUCATION GROUP and other marks within the APOLLO family of marks) mark within the Disputed Domain itself is enough to lead Internet users to believe that the Infringing website is sponsored by, or somehow affiliated with Complainant. Respondent goes even further by incorporating the '.education' TLD, implying that the Infringing Page and <educelerate.com> offer education services, an industry in which Complainant has been operating since 1973.

Moreover, the overall look and feel of the Infringing Page is very similar to that of Complainant's own website. Once a user arrives at the Infringing Page there is a black and blue banner at the top of the page, the same color scheme of the Complainant's Website. The main body of the page is white with black text, also similar to Complainant's own website. Such design elements are no coincidence, Respondent has intentionally designed the Infringing Page to mimic Complainant's website.

Finally, the text and APOLLO-formative logos are further evidence that Respondent is attempting to confuse consumers as to the association, source, and/or sponsorship of the Infringing Page. Directly under the banner, the Infringing Page prominently displays the text "Apollo in Education" in large, bolded text. Id. Further down, the page states, "Apollo has a long and global history in the education markets" and displays eight APOLLO-formative logos, including two that are nearly

identical to Complainant's marks. Id. The Infringing Page then provides information about the marks and how they are affiliated with Apollo (a clear reference to Complainant).

The combination of all of the Apollo related features and APOLLO-formative marks that make up the vast majority of the Infringing Page would lead a reasonable consumer to conclude that the page is sponsored by Complainant, when Respondent is actually attempting to redirect users to its own www.educelerate.com website, which amounts to a bad faith use and registration of the same.

Thus, the Complainant contents that the Respondent knowingly registered and has used the Disputed Domain to not only confuse customers as to the source of the Infringing Page and <educelerate.com> website, but also to disrupt Complainant's business, evidencing Respondent's bad faith use and registration of the Disputed Domain.

RIGHTS

To prevail in the proceedings under the Policy, the Complainant must show that the three requirements set forth in paragraph 4(a) of the Policy are met. Those requirements are:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

Likewise, the Respondent can demonstrate rights or legitimate interests in the disputed domain name by demonstrating, among others, the circumstances mentioned under paragraph 4(c) of the Policy.

A. Identical or Confusingly Similar

The Complainant has clearly established its registered rights in the APOLLO GLOBAL/APOLLO EDUCATION GROUP/APOLLO ACE trademarks. This family of trademarks has in common the term APOLLO, which is distinctive in relation with education services.

The disputed domain name <apollo.education> is composed of the APOLLO trademark together with the extension .education.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's APOLLO trademark, and especially to the APOLLO EDUCATION GROUP trademarks.

The condition of paragraph 4(a)(i) of the Policy has been satisfied.

NO RIGHTS OR LEGITIMATE INTERESTS

B. Rights or Legitimate Interests

As set forth by paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate a respondent's rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to the respondent of the dispute, its 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; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if

it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent did respond neither to the C&D letter nor to the Complaint. Consequently, it did not provide any evidence or circumstances to establish that it has rights or legitimate interests in the disputed domain name, according to paragraph 4(c) of the Policy.

The Respondent did not make a bona fide offering of goods or services or a non-commercial use of the disputed domain name.

The Respondent has no personal right on APOLLO. It has not been licensed or authorized to use the APOLLO trademark or to register the disputed domain name. It uses the disputed domain name to resolve to its website www.educelerate.om, the content of which is dedicated to the APOLLO education services, whereas it invites to meet in Chicago. It uses the APOLLO trademarks in order to divert the internet users to its own EDUCELERATE education services.

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the Policy.

Accordingly, the Panel finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied.

BAD FAITH

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by the Panel to be evidence of bad faith registration and use of a domain name. It provides that:

“For the purposes of Paragraph 4(a)(iii), 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 you have registered or you have 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 trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

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

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”
Given the fact that Respondent was a former employee of Complainant, he could not ignore the Complainant’s rights in the APOLLO trademarks when it registered the disputed domain name <apollo.education>, aiming at using it to communicate under both brands APPOLO and EDUCELERATE.

The Panel finds that the disputed domain name was registered in bad faith to disrupt the Complainant’s business.

The Panel finds that using the domain name to redirect to the website www.edudelerate.com the content of which uses the APOLLO and advertises about the Apollo Group and at the same time invites to meet in Chicago, I s a proof of bad faith.

Respondent intentionally attempts to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location", in the meaning of paragraph 4(b) (iv) of the Policy.

Therefore, the Panel finds that the condition set out by paragraph 4(a)(iii) of the Policy has been met by the Complainant.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has clearly established its registered rights in the APOLLO GLOBAL/APOLLO EDUCATION GROUP/APOLLO ACE trademarks. This family of trademarks has in common the term APOLLO, which is distinctive in relation with education services.

The disputed domain name <apollo.education> is composed of the APOLLO trademark together with the extension .education.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's APOLLO trademark, and especially to the APOLLO EDUCATION GROUP trademarks. The condition of paragraph 4(a)(i) of the Policy has been satisfied.

The Respondent was a former employee of the Complainant and has no personal right on APOLLO. It has not been licensed or authorized to use the APOLLO trademark or to register the disputed domain name. The Respondent uses the disputed domain name to resolve to its website www.educelerate.com, the content of which is dedicated to the APOLLO education services, whereas it invites to meet in Chicago. It uses the APOLLO trademarks in order to divert the internet users to its own EDUCELERATE education services.

The Panel finds that using the domain name to redirect to the website www.educelerate.com the content of which uses the APOLLO and advertises about the Apollo Group and at the same time invites to meet in Chicago, I s a proof of bad faith. Respondent intentionally attempts to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location", in the meaning of paragraph 4(b) (iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **APOLLO.EDUCATION**: Transferred

PANELLISTS

Name	**Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2017-10-25

Publish the Decision