Decision for dispute CAC-UDRP-101664

Case number	CAC-UDRP-101664
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Domain names	uofploanforgiveness.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Apollo Education Group, Inc.

Complainant representative

Organization	RODENBAUGH LAW

Respondent

Name	Milen Radumilo

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings between the parties to this dispute or relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

Apollo has continually used the UNIVERSITY OF PHOENIX trademark in commerce since at least 1980. Since that time, Apollo has used numerous UNIVERSITY OF PHOENIX related marks in commerce including the various UNIVERSITY OF PHOENIX logo marks, one iteration of which has been used in commerce since 1989. Apollo has also used its UOPX and PHOENIX marks in commerce since 2009, and 2014 respectively (collectively the “Apollo Marks”). Apollo has registered all of those marks with the United States PTO, to wit:

UNIVERSITY OF PHOENIX, Reg. No. 1540927, Date of First Use June 16, 1980, Reg. Date May 23, 1989

UOPX, Reg. No. 3716563, Date of First Use July 17, 2009, Reg. Date Nov. 24, 2009

PHOENIX, Reg. No. 4650293, Date of First Use Oct. 7, 2014, Reg. Date Dec. 2, 2014

UNIVERSITY OF PHOENIX (logo), Reg. No. 2089210, Date of First Use Aug. 1, 1989, Reg. Date Aug. 19, 1997

UNIVERSITY OF PHOENIX (logo), Reg. No. 3431022, Date of First Use Sept. 1995, Reg. Date May 20, 2008

UNIVERSITY OF PHOENIX (logo), Reg. No. 3988757, Date of First Use July 9, 2010, Reg. Date June 5, 2011

FACTUAL BACKGROUND

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

Complainant's Business And Trademarks

Apollo Education Group, Inc. ("Apollo" or "Complainant," fka Apollo Group, Inc.) is a United States company that 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 continually used the UNIVERSITY OF PHOENIX trademark in commerce since at least 1980. Since that time, Apollo has used numerous UNIVERSITY OF PHOENIX related marks in commerce including the various UNIVERSITY OF PHOENIX logo marks, one iteration of which has been used in commerce since 1989. Apollo has also used its UOPX and PHOENIX marks in commerce since 2009, and 2014 respectively (collectively the "Apollo Marks"). Apollo has registered all of those marks with the United States PTO, to wit:

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Through such longstanding use by Apollo, the Apollo Marks are famous both in the United States and throughout the world. Apollo has invested copious amounts of time and money in growing UNIVERSITY OF PHOENIX, UOPX, and PHOENIX brands. As such, consumers around the world have come to associate Apollo with the Apollo Marks and brands.

The current Whois registration information, provided by Domains by Proxy, reveals that the disputed domain name was created on July 25, 2016.

At least as of December, 2016, the disputed domain name resolved to a live website that read "University of Phoenix Loan Forgiveness" and provided a contact phone number as well as a link that reads "Verify Eligibility". The background of the website features a photograph of a building that displays the UNIVERSITY OF PHOENIX logo mark (reg. no. 3988757).

The website associated with the disputed domain name was being used to solicit personal and confidential information from unsuspecting students and loan holders under the guise of purportedly offering loan forgiveness programs. Upon information and belief, once a loan holder provides the information required to "verify" their eligibility, they were informed that they do not qualify for loan forgiveness, but rather were offered a loan refinance plan. This is a common scam that is used to target unsuspecting students.

Upon ‘cease and desist’ notices from Complainant, the scam website was taken down. Currently, the disputed domain name resolves to a ‘pay per click’ website, including an offer to sell the domain, and a search function. Searching for Complainant at this website reveals paid advertising of Complainant’s competitors, including National University.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

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

Complainant Apollo Has Prior, Valid Trademark Rights In the Apollo Marks

The Complainant’s numerous United States registrations for the Apollo Marks establish Apollo’s prior rights pursuant to paragraph 4(a)(i) of the Policy. Complainant’s trademark rights in the Apollo Marks date back to as early as 1980 when the UNIVERSITY OF PHOENIX mark was first used in commerce and at least as early as June 2009 when Complainant’s UOPX mark was first used in commerce; whereas, the earliest of the Disputed Domains was not even registered until May 2015, some 26 years after Complainant began using the UNIVERSITY OF PHOENIX mark and almost six years after Complainant began using the UOPX mark.

The Disputed Domain Name Is Confusingly Similar to Complainant’s Apollo Marks

A simple comparison of the disputed domain name to the Apollo Marks demonstrates that the disputed domain name is confusingly similar to the Apollo Marks and the fact that the disputed domain name incorporates additional generic terms and letters is of no consequence for the purposes of this determination.

First, it is well established that the addition of common generic terms does not avoid a finding of confusing similarity. Sharman License Holdings, Limited v. Mario Dolzer, Case No. D2004-0935 (WIPO Jan. 31, 2006). Here, the addition of the generic terms ‘loan’ and ‘forgiveness’ to the disputed domain name does nothing to create a new mark or avoid a finding of confusing similarity. Indeed, numerous UDRP decisions have held that the mere addition of those exact terms was not sufficient to avoid a finding of confusing similarity. See Florida National University, Inc. v. Registration Private, Domains By Proxy, LLC / Toby Schwarzkopf, Case No. D2017-0138, (WIPO March 14, 2017) (finding the domain name <floridanationaluniversityloanforgiveness.com> was confusingly similar to complainant’s common law FLORIDA NATIONAL UNIVERSITY and registered FNU FLORIDA NATIONAL UNIVERSITY marks and stating “the addition of the words “loan forgiveness” does not serve to dispel confusing similarity.”); American Public University System, Inc. v. Toby Schwarzkopf / Kyle Kupher / Domains by Proxy, LLC / DreamHost, LLC, Case No. D2017-0070 (WIPO March 10, 2017) (finding the domain names <americanpublicuniversitysystemloanforgiveness.com> and <americanpublicuniversityloanforgiveness.com> were confusingly similar to complainant’s logo mark that prominently features the name AMERICAN PUBLIC UNIVERSITY SYSTEM); Bridgepoint Education, Inc., Ashford University, LLC v. Phil Trackleberg, Case No. D2016-2048 (WIPO Nov. 11, 2016) (finding “the [<ashfordloanforgiveness.com>] Domain Name to be confusingly similar to the ASHFORD mark. . . . This additional text does not alter the fact that the dominant element of the Domain name is the ASHFORD mark.”); Le Cordon Bleu International B.V. v. Registration Private, Domains by Proxy, LLC / Amit Nemanim, Case No. D2016-0718 (WIPO June 3, 2016) (finding the <lecordonbleuloanforgiveness.com> domain confusingly similar to complainant’s LE CORDON BLEU mark).

Second, generic terms aside (discussed supra), the disputed domain name is similar in overall commercial impression to Complainant’s UOPX mark. More specifically, the ‘uofp’ portion of the <uofploanforgiveness.com> domain name is phonetically and visually similar to Complainant’s UOPX mark, and includes “U of P” which is an obvious reference to Complainant, University of Phoenix (particularly given the context of the early use to resolve to a scam website). Previous panels have held that omitting one letter from a mark within the domain name may sustain a finding of confusing similarity because they are visually and/or phonetically similar to the asserted mark. See e.g. Microsoft Corporation v. Microsof.com aka Tarek Ahmed, Case No. D2000-0548 (WIPO July 21, 2000) (“The term "microsof" is very similar to "microsoft" in its

visual impression. Pronunciation of the two terms is very similar. An Internet user or consumer viewing the term "microsof" (or "microsof.com") is likely to confuse it with the term "microsoft" (or "microsoft.com").”); LouisVuitton v. Net-Promotion, Case No. D2000-0430 (WIPO July 7, 2000) (“The only difference between the trademark of the Complainant "Louis Vuitton" and the domain name "luisvuitton.com" is the absence of the letter "o" in luisvuitton.com.”). The omission of the letter ‘x’ is a minor change that will not be readily perceived by most Internet users. Moreover, the UOPX mark serves as an acronym for ‘University of Phoenix’ and is therefore pronounced by stating each letter separately, i.e. U-O-P-X; similarly the domain name plays off of the same acronym and is therefore also pronounced U-O-P, merely dropping the letter “X”.

Accordingly, the overall impression of the disputed domain name and the UOPX and University of Phoenix marks are similar and enough to sustain a finding of confusing similarity.

Third, the content of the website, specifically Respondent’s use of Complainant’s Apollo Marks throughout, only highlights the fact that Respondent is attempting to cause confusion and benefit from Plaintiff’s goodwill – which should serve as additional evidence of confusing similarity. See Kuhn Rikon AG v. J. Klozenm, Case No. D2013-1194 (WIPO Aug. 28, 2013) (finding that the <swiss-rikon.com> domain name was confusingly similar to complainant’s KUHN RIKON and KUHN RIKON SWITZERLAND when taking into account additional evidence that “Complainant is the only manufacturer of kitchenware in Rikon, Switzerland, it is not difficult to see that the Respondent’s choice of name was very probably intended to enable the Respondent to ride on the back of the only manufacturer of kitchenware in Rikon, the Complainant.”).

Fourth, and finally, the addition of the generic top-level domain “.com” does nothing to distinguish any of them from Complainant’s Apollo Marks. See, e.g., InfoSpace.com, Inc. v. Ofer, D2000-0075 (WIPO Apr. 27, 2000) (finding that “[t]he domain name ‘info-space.com’ is identical to Complainant’s INFOSPACE trademark. The addition of a hyphen and .com are not distinguishing features”); AARP v. Anthony Lauberth, Case No. D2017-0155 (WIPO Mar. 12, 2017) (stating that the generic top level domain .com “may generally be disregarded” for the purposes of determining confusing similarity). Thus, the disputed domain name is confusingly similar to Complainant’s Apollo Marks. Therefore, Complainant has established the first element of the Policy under paragraph 4(a).

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

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. Accor v. Eren Atesmen, Case No. D2009-0701 (WIPO Jul. 10, 2009). 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. See Mile, Inc. v. Michael Burg, Case No. D2010-2011 (WIPO Feb. 7, 2011). In this case, Respondent has no rights or legitimate interest in the disputed domain name. Respondent not only registered the disputed domain name after Complainant’s rights in the Apollo Marks arose, but has used the disputed domain name to direct Internet users to a website that perpetuates loan forgiveness scams on unsuspecting students and loan holders thereby directly profiting from Complainant’s goodwill in the Apollo Marks. Currently, the disputed domain name resolves to a “pay per click” ad website, allowing Respondent to profit from the goodwill inherent in Complainant’s marks. Conversely, Complainant has demonstrated longstanding, exclusive use of the Apollo Marks, specifically the UOPX mark, and Complainant’s rights predate any registration or use of the disputed domain name by Respondent by some six years.

In considering whether a respondent has a right or legitimate interest in a disputed domain name under Paragraph 4(c) the panel may consider: (i) whether the respondent is using the disputed domain name in connection with a bona fide offering of goods or services; (ii) whether the respondent is commonly known by the disputed domain name; and (iii) whether the respondent is making a legitimate noncommercial use or fair use of the disputed domain name. See Paragraph 4(c). Here, Respondent has no right or legitimate interest in the disputed domain name as it has been used to perpetuate a loan forgiveness scam on unsuspecting students and loan holders by playing off of Complainant’s goodwill and confusing consumers as to the source and/or sponsorship of the websites.

Respondent Does Not Use, And Has Not Used, the Disputed Domain Name In Connection With a Bona Fide Offering Of Goods Or Services

Use of the disputed domain name to commercially benefit from Complainant's goodwill does not demonstrate any bona fide offering of goods or services. See generally SmithKline Beecham Corporation et. al. v. NA a/k/a Duke, Inc., FA 215406, (Nat'l Arb. Forum Jan. 26, 2004); (finding, "[r]espondent's use of the domain names to commercially benefit from Complainant's goodwill . . . does not constitute a bona fide offering of goods or services pursuant to Policy ¶ 4(c)(i)"). Here, Respondent has used the confusingly similar disputed domain name to direct Internet users to a website that prominently displayed the UNIVERSITY OF PHOENIX word and logo marks. The website collected personal and confidential information from unsuspecting Internet users under the guise that the user must "qualify" for and/or that the company must "verify" eligibility for the advertised loan forgiveness programs. Clearly Respondent was engaged in a scam to, at the very least, gather valuable user information. It is also further believed that Respondent profits from a loan refinance (rather than forgiveness) program which is offered to the user once they are inevitably told that they do not qualify for the purported loan forgiveness program -- which anyway would be entirely illegitimate and even further infringe Apollo's rights. Such devious actions on the part of Respondent does not qualify as a bona fide offering of goods and services as Internet users are likely to be confused as to the source or sponsorship of the websites.

In the highly analogous Florida National University case, the panel found that respondent's use of a website that purported to offer loan forgiveness programs but rather collected personal information in connection with the use of Complainant's mark was not "a bona fide offering of goods or services under paragraph 4(c)(i) of the Policy." See Florida National University, Inc., Case No. D2017-0138 (finding respondents use of the domain <floridanationaluniversityloanforgiveness.com> to collect personal information from users under the guise of a loan forgiveness program was "mala fide" rather than bona fide). Other panels have agreed that such use is clearly not a bona fide offering of goods and services, and therefore that respondents had no right or legitimate interest in such domains. See e.g. Bridgepoint Education, Inc., Case No. D2016-2048 ("The Domain Name resolves to a website where on the face of it at least, Respondent solicits visitors to . . . reduc[e] their student loan debt. Respondent's unauthorized appropriation of Complainants' mark for what Complainants characterize as a scam is not a bona fide offering of goods or services."); American Public University System, Inc., Case No. D2017-0070 (finding respondent had not rights or legitimate interest in the disputed domains where "Respondents have used the Domain Names, clearly with reference to the Complainant and not in a generic sense . . . to advertise services to students who borrowed money to purchase courses from the Complainant.").

Respondent, therefore, is not providing a bona fide offering of goods and services at any of the websites associated with the disputed domain name, but rather benefits from Complainant's goodwill when Respondent uses Complainant's logo and trademark in connection with collecting personal information from Internet users, driving traffic to Respondent's websites and offering profitable loan refinance programs under the guise of a loan forgiveness program.

Respondent Is Not Commonly Known By the Disputed Domain Name

The Whois records for the disputed domain name does not indicate that Respondent is known by any such name. See Braun Corp. v. Loney, Claim No. 699652 (NAF July 7, 2006) (finding respondent was not commonly known by the disputed domain names where neither the Whois record or any other evidence of record indicated such). Rather, the fact that the disputed domain name is confusingly similar to Complainant's Apollo Marks and that there is no evidence that Respondent is commonly known by such suggests that Respondent is attempting to use the disputed domain name to profit from Complainant's goodwill in the famous Apollo Marks. See e.g. Florida National University, Inc., Case No. D2017-0138 (finding respondent was not commonly known by the disputed domain).

And Respondent's use of a privacy service to mask its identity only further supports the notion that Respondent is not commonly known by the disputed domain name. See LK International AG v. Fundacion Private Whois, Case No. D2013-0135 (WIPO Mar. 4, 2013) (finding that the respondent was not commonly known by the disputed domain where respondent employed a privacy service and the Whois record gave no indication that respondent was commonly known by the disputed domain); Pima Fed. Credit Union v. Whois Privacy Corp., Case No. 100979 (CAC Aug. 20, 2015) (finding that the respondent, who utilized a privacy service, was not commonly known by the disputed domain).

Respondent Does Not Use the Disputed Domain Name For Any Legitimate Or Noncommercial Fair Use

The use of a disputed domain name to confuse or divert Internet traffic is not a legitimate use of a domain name. Vapor Blast Mfg. Co. v. R & S Tech. Inc, FA 96577 (Nat. Arb. Forum Feb. 27, 2001); see also Florida National University, Inc., Case No. D2017-0138 (stating that "visitors could easily expect that the website they have arrived at is affiliated with or endorsed by the Complainant."); CHANEL, INC. v. ESTCO TECHNOLOGY GROUP, Case No. D2000-0413 (WIPO Sept. 18, 2000) (finding it was not fair use, but rather infringing use, for respondent to use complainant's famous CHANEL trademark to attract the Internet users to respondent's own commercial website).

Here, Respondent is adopting Complainant's famous Apollo Marks, as incorporated to confuse consumers and divert Internet traffic to the confusingly similar disputed domain name and associated websites in an attempt to perpetuate a scam upon unsuspecting students and loan holders; and now, to profit from pay-per-click advertising. Respondent further attempted to confuse consumers as to the source of the website by intentionally using the UNIVERSITY OF PHOENIX trademark and logo within the text and images on the website. 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 name. 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 name and will not be able to establish his burden.

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

Respondent Intentionally Attempted To Divert Internet Users by Creating Likelihood of Confusion

A respondent has registered and/or used a disputed 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."

Here, Respondent is clearly attempting to create a likelihood of confusion as to the source, sponsorship, affiliation and/or endorsement of the websites associated with the disputed domain name by making generous use of Complainant's Apollo Marks without authorization. For example, the former home page clearly displayed the Complainant's UNIVERSITY OF PHOENIX mark in connection with the terms 'Loan Forgiveness' and/or 'Student Loan Forgiveness' in large bold letters. Moreover, on each of the background images on the home pages consists of a photograph of a building that displays the UNIVERSITY OF PHOENIX logo mark. This is clear evidence that Registrant is attempting to pose as and/or infer a connection or sponsorship with Apollo and/or its subsidiary University of Phoenix in an effort to cause consumer confusion.

Accordingly, the registration of the confusingly similar disputed domain name in conjunction with rampant, unauthorized use of the UNIVERSITY OF PHOENIX logo and word marks no doubt amounts to bad faith registration and use. See H-D Michigan, Inc. v. Petersons Automobile a/k/a Larry Petersons, FA 135608 (Nat'l Arb. Forum Jan. 8, 2003) (finding the disputed domain was registered and used in bad faith where "Respondent [] intentionally attempt[ed] to attract Internet users to its fraudulent website by using Complainant's famous marks and likeness."); Florida National University, Inc., Case No. D2017-0138 ("Respondent's primary motive in relation to the registration and use of the [<floridanationaluniversityloanforgiveness.com>] disputed domain name more likely than not was to capitalize on or otherwise take advantage of the Complainant's rights, by intentionally creating a likelihood of confusion with the Complainant's marks as to sponsorship, endorsement or affiliation with the Respondent's website and the services offered thereon."); Le Cordon Bleu International B.V., Case No. D2016-0718 ("The Respondent's deliberate connection of that mark to a commercial loan scheme (whether it operates in fact or not) clearly indicates the Respondent's intent to trade on confusion with the Complainant's mark, by registration and use of the disputed domain name").

Therefore, Respondent's actions in connection with the disputed domain name amounts to bad faith use and registration.

Respondent Registered the Disputed Domain Name 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. See Twiflex Limited v. Industrial Clutch Parts Ltd, D2000-1006 (WIPO Oct. 18, 2000) (finding respondents use of a domain name to redirect internet traffic to respondent's website to promote the products of complainant's competitors constituted a disruption of complainant's business and evidence of bad faith). Here, Respondent registered and used the disputed domain name to direct Internet users to websites that prey on unsuspecting students under the guise of loan forgiveness scam. Such use results in a disruption to Complainant's business and demonstrates Respondents bad faith use and registration of the disputed domain name. See e.g., Florida National University, Inc., Case No. D2017-0138 ("The record also supports an interference that the disputed domain name was registered by the Respondent in bad faith with the purpose of disrupting the Complainant's business (i.e., financial aid) under paragraph 4(b)(iii) of the Policy."). Moreover, the fact that Respondent has undertaken such actions only after Complainant's trademark rights arose is further evidence of a bad faith registration for the sole purpose of disrupting Complainant's business for Respondents own commercial gain.

Respondent is a Serial Cybersquatter, With Dozens of UDRP Decisions Against Him

A cursory search of <udrpsearch.com> reveals that Respondent has at thirty-six UDRP decisions against him, with none in favor. A copy of the search results, including all the WIPO and NAF case numbers. This proves that Respondent has engaged in a bad faith pattern of cybersquatting conduct, further in violation of the Policy.

Respondent Was Or Should Have Been Aware of Apollo's Rights In Apollo's Marks And Registered The Disputed Domain Name In Bad Faith

The disputed domain name was created decades after Complainant's trademark rights arose as Complainant first used the UNIVERSITY OF PHOENIX mark in 1980, the UOPX mark in 2009, and the UNIVERSITY OF PHOENIX logo marks in 1997. Accordingly, Complainant's rights predate Respondent's registration of disputed domain name by at least six years. Moreover, the UNIVERSITY OF PHOENIX mark is famous throughout the world; it would be inconceivable to imagine that Respondent was unaware of Complainant's rights upon registering the disputed domain name. In fact, Respondent's rampant use of the Apollo Marks suggests, rather, that Respondent was acutely aware of Complainant's rights and undertook such action deliberately.

Even if Respondent did not have actual knowledge of Apollo's Marks, Respondent had a duty to ensure that the registration of the disputed domain name would not infringe a third party's rights. See e.g, Collegetown Relocation, L.L.C. v. John Mamminga, FA 95003 (Nat'l Arb. Forum Jul. 20, 2000) (stating that "[w]hen registering domain names, the respondent has a duty to investigate and refrain from using a domain name that infringes on a third-party's rights"). Had Respondent performed a simple Google search for any of the terms "University of Phoenix", "UOPX" and/or "UOP" it would have been presented with numerous search results relating to Complainant and the existence of Complainant's rights in the Apollo Marks. A true and correct copy of screenshots of the Google search results for the terms "University of Phoenix", "UOPX" and/or "UOP" performed on March 23, 2017.

Thus, it is clear that Respondent knowingly registered and has used the disputed domain name to not only confuse customers as to the source of the websites associated with the disputed domain name but also to disrupt Complainant's business, evidencing Respondent's bad faith use and registration of the disputed domain name.

Respondent Is Perpetuating A Common Scam In An Attempt To Con Students And Unsuspecting Loan Holders For Respondent's Own Profit

The bad faith factors outlined under the Policy are by no means exhaustive. Florida National University, Inc., Case No. D2017-0138. "The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances

where the registrant seeks to profit from and exploit the trademark of another." Id. Here, the addition of the terms 'loan forgiveness' to Complainant's Apollo Marks (and/or similar variations thereof) is nothing more than a common online scam to prey on unsuspecting students and loan holders for Respondent's own profit. Previous panels have recognized that such scams should not be rewarded and that the involved domains should be transferred to the injured mark holders. See e.g. Bridgepoint Education, Inc., Case No. D2016-2048 (transferring the <ashfordloanforgiveness.com> domain to complainant and finding "that Respondent registered and has been using the Domain Name to operate a scam to receive fees from unwitting Ashford students who seek to reduce their student debt."); Le Cordon Bleu International B.V., Case No. D2016-0718 (transferring the <lecordonbleuloanforgiveness.com> domain name to complainant and stating "it seems implied . . . that the Respondent's website operates in accordance with a related loan forgiveness scheme.").

Moreover, the fact that one or more of the websites associated with the disputed domain name does not currently resolve to an active "scam" website is of no consequence and does not negate a finding of bad faith. See e.g. American Public University System, Inc, Case No. D2017-0070 (finding bad faith and transferring the dispute domain; stating "[s]creenshots attached to the Complaint show that both of the Domain Names formerly resolved to this website. However, at the time of this Decision, the disputed domain name <americanpublicuniversityloanforgiveness.com> did not resolve to an active website.").

RESPONDENT: No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Complaint was filed on August 30, 2017. On the same date, the Czech Arbitration Court (CAC) transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 16, 2017, the Registrar transmitted by email to the Center its verification response disclosing the registrants and contact information for the disputed domain names which differed from each other and from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on September 21, 2017 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on September 26, 2017.

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

In accordance with paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name the Complainant must prove the following:

(i) The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
(ii) The Respondent has no rights or legitimate interests in respect of the Domain Name; and
(iii) The Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

First of all, the Complainant has established through the evidence on record its rights in their “Apollo Marks”, specifically in relation to the UNIVERSITY OF PHOENIX and UOPX trademarks. Now then, we must turn to assess if the disputed domain name is confusingly similar to the Complainant’s trademarks. For this, the Panel determines that the disputed domain name differs from one of the Complainants’ trademarks, specifically the UOPX trademark, by the slight variation in two letters — namely, the addition of the letter “f” and the elimination of the letter “x”. Furthermore, the disputed domain name contains the addition of the phrase “LOANFORGIVENESS”.

From the above, it is clear that the disputed domain name is not identical to Complainants’ trademarks. Nevertheless, the disputed domain name incorporates some relevant features of the trademark, that in conjunction with the broader context of the case support a finding of confusingly similarity, as per paragraph 1.7 and 1.15 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition. In this case in particular, the content of the website associated with the disputed domain name, at the time of the filing of the Complaint, appears to be trading off the Complainant’s reputation, by including the Complainant’s trademark and a link to verify eligibility for a loan forgiveness program.

Accordingly, the Panel finds the Complainant has satisfied the requirements set forth under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

For the Complainant to succeed under the second element of the Policy, the Complainant has to demonstrate a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, which serves to shift the burden of production to the Respondent to rebut the Complainant’s prima facie case (see Wal-Mart Stores, Inc. v. WalMart Careers, Inc., WIPO Case No. D2012-0285).

The Respondent, in this case, failed to produce allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name. Under these circumstances we must then evaluate the uncontested facts, which in this case indicate that (a) the Respondent is not affiliated with the Complainant nor is authorized to use the Complainant’s trademark, and (b) the disputed domain name, at the time of the filing of the complaint, resolved to a website with content that appeared to be trading off the Complainant’s reputation. These two uncontested facts, in conjunction, lead the Panel to conclude that the Respondent aimed to create an impression of having an association with the Complainant, notwithstanding it did not have rights or legitimate interests in the disputed domain name (see Karen Millen Fashions Limited v. Danny Cullen, WIPO Case No. D2011-1134).

The Panel further notes that there is no available evidence on record which would otherwise allow it to find any Respondent rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds the Complainant has satisfied the requirements set forth under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The evidence on record shows that the disputed domain name has been used with the intention of obtaining information under false pretenses and likely deriving in unjust enrichment to the benefit of the Respondent. The Panel is confident that this conduct embodies the thrust of circumstances exemplified as evidence of bad faith under Paragraph 4(b) of the Policy (see Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., WIPO Case No. D2000-0163).

Accordingly, the Panel finds that the Complainant has satisfied the requirements set forth under paragraph 4(a)(iii) of the Policy.

D. Decision

For the aforementioned reasons, in accordance with Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **UOFPLOANFORGIVENESS.COM**: Transferred

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2017-10-27

Publish the Decision