Decision for dispute CAC-UDRP-102323

Case number	CAC-UDRP-102323
Time of filing	2019-01-29 11:17:28
Domain names	universityofphoenixlogins.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Apollo Education Group, Inc.

Complainant representative

Organization	RODENBAUGH LAW

Respondent

Name	gaurav negi

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following United States PTO trade mark registrations:

• THE UNIVERSITY OF PHOENIX, Registration No. 1540927, registered 23 May 1989.
• UNIVERSITY OF PHOENIX (logo), Registration No. 3431022, registered 20 May 2008.
• UNIVERSITY OF PHOENIX (logo), Registration No. 3988757, registered 5 June 2011.

FACTUAL BACKGROUND

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

The Complainant, Apollo Education Group, Inc. is a United States company that was incorporated in 1981. One of its subsidiaries is The University of Phoenix, Inc.

The Complainant founded The University of Phoenix in 1976, to cater to working adults seeking higher education. It offers evening classes, flexible scheduling, continuous enrolment, a student-centred environment, online classes, a digital library

and computer simulations. It also offers adult learners institutionally accredited programs that fit a working lifestyle and diverse career interests such as criminal justice, education, nursing and health care, psychology, and information technology.

The Complainant has continually used the name THE UNIVERSITY OF PHOENIX since at least 1980. Since then it has also used numerous UNIVERSITY OF PHOENIX related marks in commerce including the various UNIVERSITY OF PHOENIX logo marks.

The Respondent registered the disputed domain name on 8 April 2018.

PARTIES CONTENTIONS

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 trade mark 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 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

Paragraph 4 (a) of the Policy requires the Complainant to prove each of the following three elements:

(i) The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.
(ii) The Respondent has no rights or legitimate interests in the disputed domain name.
(iii) The disputed domain name has been registered and used in bad faith.

A. Identical or confusingly similar

The Complainant has long-standing rights in the name THE UNIVERSITY OF PHOENIX as well as trade mark rights for UNIVERSITY OF PHOENIX, which predate the registration of the disputed domain name.

The top-level domain ".com" is a standard registration requirement and can be ignored for the purposes of assessing confusing similarity.

Ignoring the ".com" suffix, the disputed domain name is comprised of the words "Phoenix University" plus the word "login". The dominant part of the disputed domain name is formed by the words "Phoenix University". A change in the order of words and the omission of the preposition "of" does not prevent the overall impression that the disputed domain name is confusingly similar to the Complainant's UNIVERSITY OF PHOENIX trade mark. The addition of the generic word "login" does

not distinguish the disputed domain name or help to avoid a finding of confusing similarity. (See eBay Inc. and Facebook Inc. v. Santosh Ghimire, Do Surf In P. Ltd. and Babin Manandhar, WIPO Case No. D2014-1629.)

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark and that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. No rights or legitimate interests

The Complainant's trade mark UNIVERSITY OF PHOENIX predates the registration of the disputed domain name. No business relationship exists between the Complainant and the Respondent and the Respondent is not authorised to use the Respondent's mark.

The Complainant asserts that the Respondent has never used the disputed domain name in connection with a bona fide offering of goods or services and is not commonly known by the disputed domain name.

The Complainant has established a prima facie case that the Respondent has not rights or legitimate interests in the disputed domain name. The burden of proof now shifts to the Respondent.

The Respondent has not filed a Response nor disputed any of the Complainant's submissions. There is nothing to indicate that Respondent has any relevant prior rights of its own, or that he is commonly known by the disputed domain name. Nor is there any evidence that the Respondent has used, or has been preparing to use the disputed domain name in connection with a bona fide offering of goods or services, or for a legitimate non-commercial or fair use, without intent for commercial gain.

The Panel finds that the Complainant has shown that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. Registered and used in bad faith

The Complainant asserts that the disputed domain name has been registered and is being used in bad faith and that:
(i) The Respondent was aware of the Complainant's rights when registering the disputed domain name.
(ii) The Respondent has intentionally attempted to divert Internet users by creating a likelihood of confusion by using the Complainant’s marks without authorisation.
(iii) The Respondent's use of an identical or confusingly similar domain name 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.
(iv) The Respondent is attempting to sell the disputed domain name in bad faith.

The Respondent has not filed a Response nor disputed any of the Complainant's assertions. There appears no reason why the Respondent would register the disputed domain name, other than to divert Internet users by creating a likelihood of confusion with the Complainant and its long-standing rights in the UNIVERSITY OF PHOENIX marks.

Even if Respondent did not have actual knowledge of the UNIVERSITY OF PHOENIX marks, it had a duty to ensure that the registration of the disputed domain would not infringe the Complainant's rights. As the Complainant asserts, a simple Google search for “University of Phoenix” would have returned numerous search results relating to Complainant and its rights in the mark UNIVERSITY OF PHOENIX.

The disputed domain name's website displays the Complainant's UNIVERSITY OF PHOENIX mark without authorisation, which appears to be an attempt to create a likelihood of confusion that website is in some way associated with the Complainant and its marks.

It is clear from the disclaimer on the website that the Respondent was aware of the Complainant and its rights in the mark

UNIVERSITY OF PHOENIX. The disclaimer on the website has little merit. It states: "the UniversityOfPhoenixLogins is the abbreviation to the University of Phonetic Edge in Incredible Xysts and Logins. We have nothing to do with the University of Phoenix which is the intellectual property of Apollo.edu". The abbreviation has no logical connection to the disputed domain name and the disclaimer itself shows that the Respondent was well-aware of the Complainant's rights in the UNIVERSITY OF PHOENIX mark. This combined with the Respondent's offer to sell the disputed domain name for $5,000, in excess of its out of pocket expenses, indicates that the domain name was registered for a bad faith purpose and used in bad faith.

The Panel finds that the Complainant has proved that the disputed domain name was registered and used in bad faith and that the requirement of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **UNIVERSITYOFPHOENIXLOGINS.COM**: Transferred

PANELLISTS

Name	**Veronica Bailey**

DATE OF PANEL DECISION 2019-03-07

Publish the Decision