Decision for dispute CAC-UDRP-103331

Case number	CAC-UDRP-103331
Time of filing	2020-10-07 10:42:40
Domain names	uopehelp.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	The University of Phoenix, Inc.

Complainant representative

Organization	RODENBAUGH LAW

Respondent

Name	Vitthal Somani

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is the current owner of the following registrations:

US Trademark: UNIVERSITY OF PHOENIX
Reg. No.: 1540927
DOFU: June 16, 1980
Reg. Date.: May 23, 1989
Class: 41

US Trademark: UOPX
Reg. No.: 3716563
DOFU: July 17, 2009
Reg. Date.: Nov. 24, 2009
Class: 41

US Trademark: UNIVERSITY OF PHOENIX (logo)

Reg. No.: 2089210
DOFU: Aug. 1, 1989
Reg. Date.: Aug. 19, 1997
Class 41

US Trademark: UNIVERSITY OF PHOENIX (logo)
Reg. No.: 3431022
DOFU: Sept. 1995
Reg. Date.: May 20, 2008
Class 41

US Trademark: UNIVERSITY OF PHOENIX (logo)
Reg. No.: 3988757
DOFU: July 9, 2010
Reg. Date.: June 5, 2011

FACTUAL BACKGROUND

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

I. Introduction

This Complaint was 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 The University of Phoenix, Inc.

B. The Respondent

At the time of filing, the concerned registrar's Whois database showed that the owner of the Disputed Domain was unknown and the registrant's contact information was masked by a privacy service. The registrar subsequently revealed that the owner of the Disputed Domain is listed as 'Vitthal Somani'.

III. The Domain Name

This dispute concerns the domain name: <uopehelp.com>

IV. Language of Proceedings

The language of the Registration Agreement for P.D.R Solutions (U.S.) LLC dba BigRock Solutions Ltd. is in English.

V. Jurisdictional Basis for the Administrative Proceeding

This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The registration agreement, pursuant to which the domain name that is the subject of this Complaint is registered, incorporates the Policy.

VI. Factual and Legal Grounds

This Complaint is based on the following grounds:

FACTUAL BACKGROUND

Complainant's Business And Trademarks

The University of Phoenix, Inc. ("UOPX" or "Complainant,") is a United States company that has pioneered higher education for the working learner. UOPX offers quality academic programs, qualified faculty, and a comprehensive student experience that comprise a respected institution of higher education.

UOPX has continually used the UNIVERSITY OF PHOENIX trademark in commerce since as least 1980, and the UOPX trademark in commerce since 2009. Since that time, UOPX has also extensively used in commerce the UOPX and UNIVERSITY OF PHOENIX logo marks. UOPX has registered all of those marks with the United States PTO.

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

No Business Relationship Exists Between the Parties

Respondent does not have, and has never had, permission to use the UNIVERSITY OF PHOENIX and/or UOPX marks. Nor does Respondent have any other legitimate grounds to use such marks, or to register any domain names corresponding and/or confusingly similar to such marks.

Respondent's Bad Faith Registration and Use of The Disputed Domain

At time of filing, the Whois registration information for <uopehelp.com > (the "Disputed Domain") does not provide contact details for the registrant. The Disputed Domain was created on June 8, 2014.

The Disputed Domain resolves to a website (the "Infringing Website") that prominently displays Complainant's trademark – UNIVERSITY OF PHOENIX – in the website menu and also at the top of the page. The header and footer of the Infringing Website displays a logo.

The logo groups the letters in such a way that the capitalized letters UOP are pictured together, with the 'O' overlaying the 'U' and hooking through the 'P'. The lowercase, stylized letter 'e' is connected to the word 'Help' by a dash (-). The resulting commercial impression of the text is UOP e-Help (the "UOP e-Help Logo").

One of the buttons at the top of the page includes Complainant's UNIVERSITY OF PHOENIX mark, as well as a reproduction of Complainant's phoenix logo, which is incorporated into numerous of Complainant's marks. Id. When a user clicks on the University of Phoenix button they are directed to a page of the Infringing Website that contains a purported list of Complainant's courses. When a user clicks on a link for an available course, they are presented with a purported listing of various discussions, homework, entire course materials along with the corresponding price for such materials. For example the link to "ACC 291" leads users to a page where they purportedly can download various discussion materials, assignments, other materials and even the final exam. When a user clicks on the link for "ACC 291 Final Exam" they are directed to a page that states, in pertinent part:

About The ACC 291 final exam university of phoenix
ACC 291 Final Exam is the last but the most important one to be cleared for completing the University of Phoenix Accounting major exam. ACC 291 is a 5 weeks course and acc 291 final exam answers is held in last or the 5th week. The

exam result evaluates knowledge gathered from the topics covered in the various subjects during the whole 5-week session. In this document, we have included important and frequently asked questions with their respective answers for ACC 291 Final Exam. We believes [sic] that this document will help students of Phoenix University a lot.

The page also states that the "ACC 291 Final Exam" has been purchased "26 Times".

None of this material is verified to be true or accurate, nor otherwise authorized by Complainant. To the contrary, such online unverified materials are strongly discouraged to be used by students, as their accuracy is neither verified nor otherwise guaranteed.

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

Complainant UOPX Has Prior, Valid Trademark Rights In the UOPX and UNIVERSITY OF PHOENIX marks

A complainant may satisfy the threshold requirement for standing under Paragraph 4(a)(i) of the Policy by demonstrating ownership of a valid trademark. See F. Hoffmann-La Roche AG v. Relish Enterprises, Case No. D2007-1629 (WIPO December 17, 2007) (quoting "WIPO Decision Overview" at §1.1). Here, Complainant's United States trademark registrations for the UNIVERSITY OF PHOENIX and UOPX marks establish UOPX's prior rights pursuant to paragraph 4(a)(i) of the Policy. Complainant's trademark rights date back to at least as early as 1980 when the UNIVERSITY OF PHOENIX mark was first used in commerce and 2009 when the UOPX mark was first used in commerce; whereas, the Disputed Domain was not even registered until June 2014, well over three decades after Complainant first used the UNIVERSITY OF PHOENIX mark in commerce and approximately five years after Complainant registered and used the UOPX mark.

The Disputed Domain Is Confusingly Similar To Complainant's UOPX And UNIVERSITY OF PHOENIX Mark

The burden to establish confusing similarity is low. Research in Motion Limited v. One Star Global LLC, Case No. D2009-0227 (WIPO Apr, 9, 2009). A showing of confusing similarity only requires a "simple comparison of the mark relied upon with the domain name in issue." Id. Here, a simple comparison of the <uopehelp.com> domain name and Complainant's UOPX and/or UNIVERSITY OF PHOENIX marks demonstrates that the Disputed Domains are confusingly similar.

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); see also e.g., Apollo Education Group, Inc. v. Vikash Ranaram, Case No. 101665 (CAC Oct. 15, 2017) (finding <uophelp.com> confusingly similar to UOPX); Apollo Education Group, Inc. v. Milen Radumilo, Case No. 101664 (CAC Oct. 27, 2017) (finding <uofploanforgiveness.com> confusingly similar to UOPX). Here, the addition of the generic term 'help' (or more accurately 'e-help') does nothing to create a new mark or avoid a finding of confusing similarity. See e.g. Apollo Education Group, Inc. v. Vikash Ranaram, Case No. 101665 (stating, "The Panel finds that the disputed domain name <UOPHELP.COM> incorporates the Complainant's trademark in its entirety and the disputed domain name <UOPHELP.COM> is confusingly similar to the Complainant's trademark."); HomeAway.com, Inc. v. LIU DE Bang, Case No. D2020-0320 (WIPO Apr. 16, 2020) (finding <vrbohelp.com> confusingly similar to VRBO); WeWork Companies Inc. v. Aryeh Rapaport, Case No. D2019-1078 (WIPO July 31, 2019) (finding <weworkhelp.com> confusingly similar to WEWORK); Instagram, LLC v. Whois protection / Hulmiho Ukolen, Poste restante; Case No. D2018-1304 (WIPO Aug. 9, 2018) (finding <instagramhelp.com> confusingly similar to INSTAGRAM).

Second, in the event that the word e-Help is viewed as component parts (which would be incorrect considering Respondent's use of the UOP e-Help Logo), setting aside addition of the generic term 'help' (relevance thereof discussed supra) the Disputed Domain is still similar in overall commercial impression to Complainant's UOPX mark. Both UOP and UOPX are commonly used acronyms for UNIVERSITY OF PHOENIX, as illustrated by Respondent's use of Complainant's UNIVERSITY OF PHOENIX mark in connection with purported course materials for Complainant's students. Moreover, the UOP portion of the Disputed Domain is phonetically and visually similar to Complainant's UOPX mark, merely substituting the letter 'e' in the place of the letter 'x' in the domain name. Previous panels have held that replacing 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., F. Hoffmann-La Roche AG v. Mavaron LLC, Case No. D2013-0208 (WIPO Mar. 20, 2013). (stating, “The only difference between the Respondent’s disputed domain name and the Complainant’s trademark is that the disputed domain name <taniflu.com> is purposefully misspelled by substituting the letter “m” with the letter “n”. This conduct . . . creates a virtually identical and/or confusingly similarity to the Complainant’s trademark under paragraph 4(a)(i) of the Policy . . .”.); Intersystems Corporation v. Registration Private, Domains By Proxy, LLC / Brimoh Kadiri, Case No. D2018-1784 (WIPO Sept. 22, 2018) (stating, “The Panel finds Respondent has engaged in typosquatting by registering the Domain Name <intersistems.com>, which consists of a misspelling of the INTERSYSTEMS Mark – substituting the letter “i” for the letter “y.””); Apollo Education Group, Inc. v. Vikash Ranaram, Case No. 101665 (finding <uophelp.com> confusingly similar to UOPX); Intuit Inc. v. Privacy.co.com - 5b19c, Savvy Investments, LLC Privacy ID #1083438, Case No. D2020-1497 (WIPO Aug. 18, 2020) (finding <torbrotax.com> confusingly similar to TURBOTAX). Replacing the letter ‘x’ within the Disputed Domain is a minor change that will not be readily perceived by most Internet users. Accordingly, the overall impression of the <uopehelp.com> domain name and the UOPX mark are highly confusingly similar.

Third, and with regard to Complainant’s UNIVERSITY OF PHOENIX mark, confusing similarity may be found where the disputed domain is made up of, or incorporates, an acronym and or abbreviation for a complainant’s registered marks. See Pima Federal Credit Union v. Whois Privacy Corp., Case No. 100979 (CAC Sept. 3, 2015) (finding confusing similarity between complainant’s PIMA FEDERAL CREDIT UNION marks and the <pimafcu.org> domain name stating that the letters ‘fcu’ within the disputed domain “can be seen as an acronym for ‘federal credit union’. According to the Panel, these differences are not sufficient to escape the finding that the Domain Name is confusingly similar to the Complainant’s trademarks.”); see also, Express Messenger Systems, Inc. v. Golden State Overnight, Case No. D2001-0063 (WIPO March 26, 2001) (finding the domain name <calovernight.com> confusingly similar to complainant’s “California Overnight” mark).

In the case at hand, there is no question that the letters ‘uop’ are intended as an acronym for Complainant’s UNIVERSITY OF PHOENIX mark, as evinced by Complainant’s own use of the acronym within the UOPX mark, and Respondent’s use of the UOP acronym (i.e. prominent display of the “UOP e-Help Logo” at the top and bottom of the Infringing Website), and the explicit text stating that such materials are to be used in connection with Complainant’s courses (e.g. “ACC 291 Final Exam is the last but the most important one to be cleared for completing the University of Phoenix Accounting major exam.”).

Finally, the addition of the generic top-level domain “.com” does nothing to distinguish the Disputed Domain Complainant’s UOPX or UNIVERSITY OF PHOENIX 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, Case No. D2017-0155 (stating that the generic top-level domain .com “may generally be disregarded” for the purposes of determining confusing similarity). Thus, the <uopehelp.com> domain name is confusingly similar to Complainant’s UOPX and UNIVERSITY OF PHOENIX 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

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. Respondent not only registered the Disputed Domains years after Complainant’s rights in the UOPX and UNIVERSITY OF PHOENIX marks arose, but is using the Disputed Domain to direct Internet users to a website that sells University of Phoenix course specific discussion questions, homework assignments, exams, and other materials, while directly stating that they sell materials for University of Phoenix courses thereby directly profiting from Complainant’s goodwill in the UOPX and UNIVERSITY OF PHOENIX marks. See Annex 4. Further, there is no question that Respondent has actually, directly profited from Complainant’s goodwill as the Infringing Website states that the ACC 291 Final Exam alone has been purchased 26 times. Conversely, Complainant has demonstrated longstanding, exclusive use of the UOPX and UNIVERSITY OF PHOENIX marks, and Complainant’s rights

predate any registration or use of the Disputed Domain by Respondent by, at a very minimum, some five 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 non-commercial use or fair use of the disputed domain. See Paragraph 4(c). Here, Respondent has no right or legitimate interest in the Disputed Domain and is only using the Disputed Domain to sell purported University of Phoenix course materials in order to profit from Complainant's goodwill and to confuse consumers as to the source and/or sponsorship of the Infringing Website.

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. 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 paragraph 4(c)(i)"). Here, Respondent is using the confusingly similar Disputed Domain to direct Internet users to the Infringing Website, which sells, and has sold, University of Phoenix course-specific materials. The fact that Respondent refers to itself as "UOP e-Help", states that they sell materials for "University of Phoenix" courses, refers to Complainant directly by name, uses Complainant's phoenix logo, and indirectly refers to Complainant through the use of Complainant's course numbers and materials, leaves no question that Respondent is only attempting to profit from Complainant's goodwill.

Respondent, therefore, is not providing a bona fide offering of goods and services in connection with the Disputed Domain, but rather directly misappropriates Complainant's goodwill by using a shorter variation of Complainant's famous UOPX and UNIVERSITY OF PHOENIX marks in connection with marketing and selling unverified and illegitimate course materials purportedly for University of Phoenix courses.

Respondent Is Not Commonly Known By The Disputed Domain

The Whois record for the Disputed Domain does not indicate that Respondent is known by the disputed domain, rather Respondent has chosen to mask their identity by using a domain name privacy service. Once Respondent's identity was revealed by the Registrar Verification, it was further confirmed that they are not known by the Disputed Domain, but rather as "Vitthal Somani". Complainant is not aware of any additional evidence that would suggest that Respondent is known by the Disputed Domain. See Braun Corp. v. Loney, Claim No. 699652 (Forum 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).

Nor is Respondent affiliated with Complainant. Rather, the fact that the Disputed Domain is confusingly similar to Complainant's UOPX and UNIVERSITY OF PHOENIX marks and that there is no evidence that Respondent is commonly known by such suggests that Respondent is attempting to use the Disputed Domain to profit from Complainant's goodwill. See e.g. Florida National University, Inc. v. Registration Private, Domains By Proxy, LLC / Toby Schwarzkopf, Case No. D2017-0138 (WIPO Mar. 14, 2017) (finding respondent was not commonly known by the disputed domain).

Respondent Does Not Use The Disputed Domains For Any Legitimate Or Non-commercial Fair Use

The use of a disputed domain 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 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 UNIVERSITY OF PHOENIX and UOPX marks, as incorporated within the Disputed Domain to confuse consumers and divert Internet traffic to the confusingly similar <uopehelp.com> domain name in order to sell purported, unverified and unauthorized course materials for University of Phoenix courses. Such use does not

constitute a legitimate or non-commercial fair use, but rather is an infringing bad faith use.

When it can be demonstrated, as it is here, that Respondent is using Complainant's mark without authorization and is clearly trading off Complainant's goodwill, there is no question that the Respondent has no right or legitimate use of the domains. Apollo Education Group, Inc. v. Milen Radumilo, Case No. 101664 ("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 . . . .").

UOPX 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 USED IN BAD FAITH

Respondent has Demonstrated His Bad Faith Through His Pattern of Conduct Harassing Complainant Dating Back to 2015

In 2015, Respondent aka Vivek Somani registered at least 580 domains reflecting Complainants trademarks, including but not limited to <uophelp.com> and <uopcart.com>. Complainant sued Registrant for trademark infringement, cybersquatting, and unfair competition. A true and correct copy of the complaint filed in Apollo Education Group, Inc. v. Vivek Somani, case no. 15-cv-1056, is attached. After seven months of litigation, the parties entered a Final Consent Judgement and Permanent Injunction, wherein Somani agreed to transfer all of the domains to Complainant, and Respondent agreed to be permanently enjoined from, among other things, registering any domain name that reflects a trademark of Complainant, and creating, promoting, and/or selling any materials that refer or relate to Complainant.
Respondents flagrant violation of the Consent Judgement demonstrates his bad faith intent to profit from Complainants trademarks and a systematic pattern of bad faith conduct.

Respondent Intentionally Attempted To Divert 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."

The Respondent is clearly attempting to create a likelihood of confusion as to the source, sponsorship, affiliation and/or endorsement of the Infringing Website by making use of the UOP acronym (which is almost identical to Complainant's UOPX mark) via the UOP e-Help Logo; such use is enough to lead students to believe that the Infringing Website is sponsored by Complainant.

Additionally, once a user arrives at the Infringing Website, they are presented with Complainant's UNIVERSITY OF PHOENIX mark and phoenix logo. When users click on the 'University of Phoenix" button, they are directed to a page that boasts hundreds of links that purportedly correspond to University of Phoenix courses. The links direct users to various pages that sell purported -- but unverified and unauthorized -- course materials. For example, the link for 'ACC 291' directs users to a page where they can purchase a document titled "ACC 291Final Exam". When a user clicks on the link, they are provided with a detailed description of the document including purported sample test questions. The page also includes text that states, "ACC 291 Final Exam is the last but the most important one to be cleared for completing the University of Phoenix Accounting major exam." Accordingly, the registration of the confusingly similar Disputed Domain in conjunction with the use of the confusingly similar UOP acronym and UNIVERSITY OF PHOENIX mark in connection with illegitimate course materials that correspond to Complainant's own is clear evidence that Registrant is attempting to pose as and/or infer a

connection or sponsorship with UOPX in an effort to cause consumer confusion. Apollo Education Group, Inc. v. Milen Radumilo, Case No. 101664 ("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 . . . ."); Florida National University, Inc. v. Registration Private, Domains By Proxy, LLC / Toby Schwarzkopf, Case No. D2017-0138 (March 14, 2017) ("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."); Philip Morris Products S.A. v. Cong Ty TNHH Dau Tu Van Xay Dung Va Vien Thong PDA Viet N, Case No. D2018-2332 ("The Panel takes the view that any Internet users seeking to purchase goods under the Complainant's trademark would very likely mistakenly believe that the Respondent is either connected to or associated with the Complainant. However, no such connection exists in fact."); see e.g., SAP SE v. Domain Admin, Whois Privacy Corp., Case No. D2019-3023 ("The disputed domain name [<sapcourses.com>] is active for a website offering "SAP Courses and Training" . . . . This shows a clear intention of impersonation, trying to make Internet users believe that the website is an official site of the Complainant."); Royal Yachting Association v. Baron Kurtz, Case No. D2010-0927 ("Respondent appears to have used the Domain Name[ ] [ryacourses.com] for commercial gain without the consent of Complainant. Such conduct exploits with a commercial purpose the reputation of Complainant and its trademarks. . . . [users] have already been attracted to the website as a result of the confusing similarity between Complainant's trademarks and the Domain Names, and Respondent has gained an opportunity to benefit from any purchases they may make through its website."). Therefore, Respondent's actions in connection with the Disputed Domain amounts to bad faith use and registration.

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. 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 has registered and is using the Disputed Domain to direct Internet users to the Infringing Website, which sells unsanctioned University of Phoenix course materials in connection with the confusingly similar 'UOP' acronym and UNIVERSITY OF PHOENIX mark. Such use results in a disruption to Complainant's business and demonstrates Respondents bad faith use and registration of the Disputed Domain. 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 Was Or Should Have Been Aware Of UOPX Rights In The UNIVERSITY OF PHOENIX and UOPX Marks And Registered The Disputed Domain In Bad Faith

The Disputed Domain was created decades after Complainant's trademark rights arose as Complainant registered the UNIVERSITY OF PHOENIX mark in 1989, and the UOPX mark in 2009. Accordingly, Complainant's rights predate Respondent's registration of the Disputed Domain by at least 35 years. Respondent's use of the UNIVERSITY OF PHOENIX mark and confusingly similar UOP mark 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 UOPX's trademark rights, Respondent had a duty to ensure that the registration of the Disputed Domain would not infringe a third party's rights. See Collegetown Relocation, L.L.C., FA 95003 (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. True and correct copies of screenshots of the Google search results for the terms “University of Phoenix”, “UOPX” and/or “UOP” performed on August 29, 2020, is attached.

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 Website, but also to disrupt Complainant’s business, evidencing Respondent’s bad faith use and registration of the Disputed Domain.

VII. Mutual Jurisdiction

Complainant submitted to a court jurisdiction in Burlington, Massachusetts, USA, where the Disputed Domain registrar maintains its principal place of business. Per the registrar website at https://www.bigrock.in/about-us/:

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 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 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

I. RIGHTS

This Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademarks University Of Phoenix and UOPX. The disputed domain name will be easily interpreted by the public as "UOP e-help", as the content of the website, whose header reproduced a logo with that expression, would also contribute to this.

UOP corresponds to the initials of University Of Phoenix and is also similar to the UOPX trademark. It is true that this is not a clear-cut case as to the similarity between the disputed domain name and the earlier marks, but as the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) states in paragraph 1.15, in some cases it is appropriate to take a holistic view and to assess all the circumstances of the case:

"The content of the website associated with the domain name is usually disregarded by panels when assessing confusing similarity under the first element.

In some instances, panels have however taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed

domain name.

Such content will often also bear on assessment of the second and third elements, namely whether there may be legitimate co-existence or fair use, or an intent to create user confusion."

In this case, the content of the website made constant reference to the Complainant and therefore contributed to the confusion between the disputed domain name and the Complainant's trademarks.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the domain name in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D20020856:

"As mentioned [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed domain name, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists." WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

Furthermore, the Respondent's website hosted content expressly referring to the Complainant and its educational services, giving the false impression that it was a website of the University of Phoenix. Obviously, this use cannot be considered as legitimate..

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

III. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant´s allegations and evidence with regard to the Respondent´s registration and use of the disputed domain name in bad faith. The Complainant has clearly demonstrated that the disputed domain name hosted a website that made specific reference to the University of Phoenix, providing official-looking content. It seems therefore clear that the Respondent was trying to impersonate the Complainant.

It is therefore clear that the Respondent registered the domain name for this fraudulent purpose.

Paragraph 4(b) (iiii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent has registered and is using the disputed domain name in bad faith:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or location or of a product or service on its website or location.

As mentioned in Andrey Ternovskiy dba Chatroulette v. Alexander Ochki, WIPO Case No. D2017-0334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see AT&T Corp. v. Amjad Kausar, WIPO Case No. D2003-0327)."

Furthermore, the Complainant also provided evidence of a prior court dispute between the parties for this type of action by the Respondent which concluded with the Respondent's commitment not to re-register identical or confusingly similar domain names with the Complainant's trademarks. The breach of this undertaking also proves the Respondent's bad faith.

It has, therefore, been satisfactorily demonstrated to the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **UOPEHELP.COM**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2020-11-11

Publish the Decision