

## Decision for dispute CAC-UDRP-104783

Case number **CAC-UDRP-104783**

Time of filing **2022-08-10 08:58:29**

Domain names **peachyessay.net, peachyessay.org**

### Case administrator

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

### Complainant

Organization **Peachy Essay LLC**

### Respondent

Name **Maxwell Mbembe**

#### OTHER LEGAL PROCEEDINGS

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

#### IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of UK trademark registration (containing the terms PEACHY ESSAY) no. UK00003534104 "Your Number One Essay Writing Service PEACHY ESSAY Since 2007" (figurative), effective as of the date 16/09/2020 and entered in the register on January 8, 2021 for services in class 41.

#### FACTUAL BACKGROUND

It results from the Complainant's undisputed allegations that the complainant named 'Peachy Essay LLC' is a renowned 'Online Academic Writing Company', well-known for providing high quality essay writing services & academic writing for variety of students from medicine to the arts, technology to law and many more. The complainant's customers are coming from all over the world including UK, US, Canada, Australia, New Zealand, Ireland, many EU countries and countries in the Gulf area (mainly UAE and Qatar). Furthermore, under the brand name 'Peachy Essay' the complainant is working with many academics in a wide range of fields covering almost every single subject and courses offered by universities, colleges and any other higher education institutions. It contends that it has a very strong online presence on all major social media platforms.

The Complaint further contends that it has attained a high degree of reputation and goodwill in the business.

Moreover, the Complainant uses the domain name <peachyessay.com> (registered on May 8, 2018), which resolves to its official website, through which it promotes its businesses.

The disputed domain name <peachyessay.net> was created on July 6, 2021, while the disputed domain name <peachyessay.org> was created on August 3, 2021. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain names resolve to webpages allegedly offering identical/similar services than those of the Complainant.

Finally, the Complainant sent on September 1, 2021 a cease-and-desist letter to the e-mail address indicated to the website to which the disputed domain name <peachyessay.org> resolve, requesting amongst others to take down that website. However, the Complainant did not receive any Response.

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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).

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#### 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 names (within the meaning of paragraph 4(a)(ii) of the Policy).

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#### BAD FAITH

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

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

1. Pursuant to paragraph 4(a)(i) of the Policy, the complainant must establish rights in a trademark or service mark, and that the disputed domain names are identical or confusingly similar to a trademark in which the complainant has rights.

It results from the evidence provided, that the Complainant Peachy Essay LLC is the registered owner of UK trademark registration (containing the terms PEACHY ESSAY) no UK00003534104 “Your Number One Essay Writing Service PEACHY ESSAY Since 2007” (figurative), effective as of the date 16/09/2020 and entered in the register on 08/01/2021 for services in class 41.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant’s trademark where at least a dominant feature of the relevant mark is recognizable in the domain name (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) at section 1.7. This Panel shares this view and notes that the disputed domain names incorporate the dominant feature of the Complainant’s trademark, i.e. “PEACHY ESSAY”, which is clearly recognizable in the disputed domain names.

Finally, the generic Top-Level Domain (“gTLD”) (respectively “.net” and “.org”) of the disputed domain names is typically disregarded under the first element confusing similarity test (see WIPO Overview 3.0 at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests to the disputed domain names. In the Panel’s view, based on the

undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain names.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did not authorize the Respondent's use of its trademarks containing the terms PEACHY ESSAY or the registration of the disputed domain names.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain names in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain names incorporate the dominant feature of the Complainant's trademark i.e. "PEACHY ESSAY" and these are not terms that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain names resolve to webpages allegedly offering identical/similar services than those of the Complainant. The Panel finds it most likely that the Respondent selected the disputed domain names with the intent to attract Internet users for commercial gain.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Complainant has put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names and the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain names have been registered and are being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain names' registration and use in bad faith. One of these circumstances is that the Respondent by using the disputed domain names, 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 (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand.

Based on the evidence submitted by the Complainant, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain names consisted of the dominant feature of the Complainant's trademark when it registered the disputed domain names. In addition, it results from the Complainant's documented allegations that the disputed domain names resolve websites allegedly providing similar/identical services to those of the Complainant. Registration of the disputed domain names, in awareness of said mark and in the absence of rights or legitimate interests amounts to registration in bad faith.

The finding of bad faith registration and use is supported by the further circumstances resulting from the case at hand which are: (i) the Respondent's failure to submit a formal response; (ii) the Respondent failed to reply to the cease and desist letter sent by the Complainant before the commencement of this proceeding; (iii) the Respondent used a privacy service hiding its identity; and (v) the absence of any conceivable good faith use to which the disputed domain names may be put.

In the light of the above the Panel finds that the disputed domain names have been registered and are being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **PEACHYESSAY.NET**: Transferred
- 2. **PEACHYESSAY.ORG**: Transferred

PANELLISTS

Name	<b>Dr. Federica Togo</b>
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DATE OF PANEL DECISION	2022-09-19
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Publish the Decision