

Decision for dispute CAC-UDRP-105900

Case number CAC-UDRP-105900

Time of filing 2023-10-20 10:42:55

Domain names CHAI-APP.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization Chai Research Corp.

Complainant representative

Organization John B. Berryhill LLC

Respondent

Name Andrew Haynes

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 name.

IDENTIFICATION OF RIGHTS

Complainant has attained common law rights in the CHAI mark as a result of its extensive use of the mark for leading research and applications of chat dialogs with artificial intelligence since January 2022.

FACTUAL BACKGROUND

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

The Complainant, originally operated as a partnership among its owners, was incorporated in Delaware in January 2022, and has quickly established a reputation for leading research and applications of chat dialogs with artificial intelligence. By October 2022, the Complainant's AI chat platform had begun very fast growth, with 100,000 daily users and 300 million monthly messages. By March 2023, the chat volume handled by the Complainant's platform was up to 500 million messages per month. By May 2023, the Complainant's platform had served over 4 billion messages.

The disputed domain name was registered on May 16, 2023.

PARTIES CONTENTIONS

COMPLAINANT:

i) The Complainant has attained common law rights in the CHAI mark as a result of its extensive use of the mark for leading research and applications of chat dialogs with artificial intelligence since January 2022. The disputed domain name is confusingly similar to the Complainant's mark CHAI.

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name resolves to a website which has been evolving in sophistication over a period of months. The Respondent passes itself off as the Complainant. Displaying an obscure and unclear "disclaimer" suggests that the Respondent is making illegitimate use of the Complainant's mark to pass itself off as the Complainant and divert Complainant's customers.

iii) The Respondent has registered and is using the disputed domain name in bad faith. The Respondent appears to have adopted the disputed domain name confusingly similar to the Complainant's mark for the purpose of passing itself off as the Complainant and advertising competitive products, while posting an obscure "disclaimer" which indicates the Respondent is perfectly well aware of the Complainant and its illicit use of the Complainant's mark.

RESPONDENT:

Respondent did not submit a response in this proceeding.

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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO February 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant claims common law rights in the CHAI mark as a result of its extensive use of the mark for leading research and applications of chat dialogs with artificial intelligence since January 2022. The Panel is of the view that to establish unregistered or common law trademark rights for purposes of the Policy, the Complainant must show that its mark has become a distinctive identifier which consumers associate with the Complainant's goods and/or services. The Panel finds that the Complainant has established common law rights in the CHAI mark prior to the registration of the disputed domain name under Policy paragraph 4(a) (i) because consumers in the relevant market are likely to recognize the mark "CHAI" as a source indicator of the Complainant's app products and services under the circumstances:

(i) The Complainant was incorporated in Delaware in January 2022, and has quickly established a reputation for leading research and applications of chat dialogs with artificial intelligence;

(ii) By October 2022, the Complainant's AI chat platform had begun very fast growth, with 100,000 daily users and 300 million monthly messages;

(iii) By March 2023, the chat volume handled by the Complainant's platform was up to 500 million messages per month;

(iv) The Complainant's "CHAI" AI chat app is available on the Apple app store. The Complainant's app is rated at 4.5 out of 5 with more than 80,000 reviews, and had been up to version 1.81 by 14 June 2023;

(v) The Complainant's "CHAI" app has received 122,000 reviews and over 1 million downloads in the Google Play store;

(vi) The February 2022 Archive.org capture of the Complainant's website shows exponential growth reaching toward 6,000 daily active users; and

(vii) By May 2023, the Complainant's platform had served over 4 billion messages.

The Complainant further contends that the disputed domain name <CHAI-APP.com> is confusingly similar to its mark CHAI because the disputed domain name incorporates entirely the Complainant's mark CHAI, merely adding a generic term "APP" and the '.com' gTLD. The Panel observes that a generic or descriptive term is generally disregarded in the assessment under paragraph 4(a) (i) of the Policy when comparing a disputed domain name and a trademark. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's mark CHAI.

No rights or legitimate interests

The Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 (the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP). See also *Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (FORUM November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. When a response is lacking, WHOIS information may be used to determine whether a respondent is commonly known by the disputed domain names under Policy paragraph 4(c)(ii). See *H-D U.S.A., LLC, v. Ilyas Aslan / uok / Domain Admin ContactID 5645550 / FBS INC / Whoisprotection biz*, FA 1785313 (Forum June 25, 2018) ("The publicly available WHOIS information identifies Respondent as 'Ilyas Aslan' and so there is no prima facie evidence that Respondent might be commonly known by either of the [<harleybot.bid> and <harleybot.com>] domain names."). Additionally, lack of authorization to use a complainant's mark may indicate that the respondent is not commonly known by the disputed domain name. See *Google LLC v. Bhawana Chandel / Admission Virus*, FA 1799694 (Forum Sep. 4, 2018) (concluding that Respondent was not commonly known by the disputed domain name where "the WHOIS of record identifies the Respondent as "Bhawana Chandel," and no information in the record shows that Respondent was authorized to use Complainant's mark in any way."). The WHOIS information for the disputed domain name lists the registrant as "Andrew Haynes." Nothing in the record suggests that the Respondent was authorized to use the CHAI mark. Therefore, the Panel finds that the Respondent is not commonly known by the disputed domain name per Policy paragraph 4(c)(ii).

The Complainant also contends that the Respondent has failed to use the disputed domain name in connection with a bona fide offering of goods or services. The disputed domain name resolves to a website which has been evolving in sophistication over a period of months. The Contentions and evidence submitted by the Complainant suggest that the Respondent is making illegitimate use of the Complainant's mark to pass itself off as the Complainant and divert the Complainant's customers. The Respondent has been constructing a website apparently designed to fool visitors into believing it is associated with the Complainant, and offering an identically-branded app for download. The Respondent's website shows an image of a smartphone shown to be running a "Chai" AI chat app, and uses the same colors associated with the Complainant's genuine "CHAI" app.

The Panel observes that passing off as a complainant does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy paragraphs 4(c)(i) or (iii). See *Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund*, FA 1790949 (Forum July 9, 2018) (finding the respondent did not use the domain name to make a bona fide offering of goods or services per Policy paragraph 4(c)(i) or for a legitimate noncommercial or fair use per Policy paragraph 4(c)(iii) where the website

resolving from the disputed domain name featured the complainant's mark and various photographs related to the complainant's business); see also *Wolverine World Wide, Inc. v. Fergus Knox*, FA 1627751 (Forum Aug. 19, 2015) (finding no bona fide offering of goods or legitimate noncommercial or fair use existed where Respondent used the resolving website to sell products branded with Complainant's MERRELL mark, and were either counterfeit products or legitimate products of Complainant being resold without authorization). The Panel finds that the Respondent creates a false sense of legitimacy that is to confuse consumers into believing it is related to or affiliated with the Complainant when it is not. Therefore, the Panel finds the Respondent fails to make a bona fide offering of goods or services or a legitimate noncommercial or fair use in connection with the domain name <CHAI-APP.com> per Policy paragraph 4(c)(i) or (iii).

The Panel notes that near the bottom of the disputed domain name's resolving webpage, there is a "disclaimer" stating "Chai-app.com is a fan site. We are not associated with official site. Full rights go to the original developers." The Panel is of the view that for purposes of assessing fair use under UDRP paragraph 4(c)(iii), a respondent's fan site must be active, genuinely noncommercial, and clearly distinct from any official complainant site. See paragraph 2.7.1, WIPO Jurisprudential Overview 3.0 ("For purposes of assessing fair use under UDRP paragraph 4(c)(iii), a respondent's fan site must be active, genuinely noncommercial, and clearly distinct from any official complainant site. There are a number of UDRP cases in which the respondent claims to have a true fan site but the panel finds that it is primarily a pretext for cybersquatting or commercial activity."). The Panel finds that the disputed domain name's resolving website is neither genuinely noncommercial nor clearly distinct from the Complainant's official website given the circumstances: (i) the Respondent's use of the Complainant's mark to publish a website purportedly claiming to offer "Our app"; (ii) providing no functional link to the Complainant's product; (iii) using the Complainant's color scheme; (iv) advertising competitive products; and (v) bearing an obscure and unclear "disclaimer." Therefore, the Panel finds that the "disclaimer" on the disputed domain name's resolving website cannot make a fair use of the disputed domain name.

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

The Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. The Respondent appears to have adopted the disputed domain name confusingly similar to the Complainant's mark for the purpose of passing itself off as the Complainant and advertising competitive products, while posting an obscure "disclaimer" which indicates the Respondent is perfectly well aware of the Complainant and its illicit use of the Complainant's mark.

The Panel recalls that the Complainant provides a screenshot of the disputed domain name's resolving website offering an identically-branded app for download. The Respondent's website shows an image of a smartphone shown to be running a "Chai" AI chat app, and uses the same colors associated with the Complainant's genuine "CHAI" app. The Panel finds that the Respondent's use of the disputed domain name <CHAI-APP.com> to pass off as the Complainant and to offer competing services and/or goods is evidence of bad faith registration and use pursuant to Policy paragraph 4(b)(iv). See *Citadel LLC and its related entity, KCG IP Holdings, LLC v. Joel Lespinasse / Radius Group*, FA1409001579141 (Forum Oct. 15, 2014) ("Here, the Panel finds evidence of Policy paragraph 4(b)(iv) bad faith as Respondent has used the confusingly similar domain name to promote its own financial management and consulting services in competition with Complainant."); see also *Bank of America, National Association v. Marcos Alexis Nelson*, FA1505001621654 (Forum July 2, 2015) (findings that the respondent had registered and used the disputed domain name in bad faith according to Policy paragraph 4(b)(iv) where it used the disputed domain name to promote its business in real estate and financial services, which were services that competed with the services the complainant offered); see also *Bittrex, Inc. v. Wuxi Yilian LLC*, FA 1760517 (Forum Dec. 27, 2017) (finding bad faith per Policy paragraph 4(b)(iv) where "Respondent registered and uses the <lbittrex.com> domain name in bad faith by directing Internet users to a website that mimics Complainant's own website in order to confuse users into believing that Respondent is Complainant, or is otherwise affiliated or associated with Complainant."). As such, the Panel finds that the Respondent registered and uses the disputed domain name in bad faith pursuant to Policy paragraph 4(b)(iv).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. CHAI-APP.com: Transferred

PANELLISTS

Name	Mr. Ho-Hyun Nahm Esq.
------	-----------------------

DATE OF PANEL DECISION 2023-11-17

