



DECISION

Aleks Corporation v. SUSHILA ASNODKAR / PROJUkti WEB SERVICE
Claim Number: FA1906001846745

PARTIES

Complainant is **Aleks Corporation** (“Complainant”), represented by **Karin Segall** of **Leason Ellis LLP**, New York, USA. Respondent is **SUSHILA ASNODKAR / PROJUkti WEB SERVICE** (“Respondent”), India.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<alekshomeworkhelp.com>**, registered with **FastDomain Inc.**.

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

David A. Einhorn appointed as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on June 6, 2019; the FORUM received payment on June 6, 2019.

On June 7, 2019, FastDomain Inc. confirmed by e-mail to the FORUM that the **<alekshomeworkhelp.com>** domain name is registered with FastDomain Inc. and that Respondent is the current registrant of the name. FastDomain Inc. has verified that Respondent is bound by the FastDomain Inc. registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN’ s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On June 10, 2019, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of July 1, 2019 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent’ s registration as technical, administrative, and billing contacts, and to postmaster@alekshomeworkhelp.com. Also on June 10, 2019, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent’ s registration as technical, administrative and billing contacts.

Having received no response from Respondent, the FORUM transmitted to the parties a Notification of Respondent Default.

On July 5, 2019, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the FORUM appointed David A. Einhorn as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the FORUM's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

Complainant operates in the educational publishing and technology industries. Complainant has rights in the ALEKS mark based upon its registration of the mark with the United States Patent and Trademark Office ("USPTO") (e.g., Reg. No. 2,391,685 registered October 3, 2000). Respondent's **<alekshomeworkhelp.com>** domain name is identical or confusingly similar to Complainant's ALEKS mark because it wholly incorporates Complainant's ALEKS mark, and merely adds the descriptive terms "homework" and "help," as well as the ".com" generic top-level domain ("gTLD").

Respondent lacks rights or legitimate interests in the **<alekshomeworkhelp.com>** domain name. Respondent is not authorized to use Complainant's ALEKS mark and is not commonly known by the disputed domain name. Additionally, Respondent fails to use the disputed domain name in connection with a *bona fide* offering of goods and services or for a legitimate noncommercial or fair use because Respondent uses the disputed domain name's resolving webpage to offer homework cheating services for Complainant's educational programs

Respondent registered and uses the **<alekshomeworkhelp.com>** domain name in bad faith because Respondent attempts to disrupt Complainant's business and attract, for commercial gain, users to the disputed domain name where Respondent uses the disputed domain name's resolving webpage to offer homework cheating services for Complainant's educational programs.

B. Respondent

Respondent did not submit a response. The Panel notes that Respondent registered the disputed domain name on February 17, 2019.

FINDINGS and DISCUSSION

Paragraph 15(a) of the Rules 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 Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of 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 set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at ¶ 4.3; see also *eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire*, FA 157287 (FORUM June 26, 2003) ("Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint").

Identical and/or Confusingly Similar

Complainant asserts rights in the ALEKS mark based upon registration with the USPTO (e.g., Reg. No. 2,391,685 registered October 3, 2000). Registration of a mark with the USPTO is sufficient to establish rights in the mark pursuant to Policy ¶ 4(a)(i). See *DIRECTV, LLC v. The Pearline Group*, FA 1818749 (FORUM Dec. 30, 2018) ("Complainant's ownership of a USPTO registration for DIRECTV demonstrate its rights in such mark for the purposes of Policy ¶ 4(a)(i).") Therefore, the Panel finds that Complainant has rights in the ALEKS mark per Policy ¶ 4(a)(i).

Next, Complainant argues Respondent's <**alekshomeworkhelp.com**> is identical or confusingly similar to Complainant's mark as it wholly incorporates the ALEKS mark and merely adds the descriptive terms "homework" and "help,".

The addition of descriptive terms to a complainant's mark have been found insufficient to withstand a test of confusing similarity pursuant to Policy ¶ 4(a)(i). *The Toronto-Dominion Bank v. George Whitehead*, FA 1784412 (FORUM June 11, 2018) (“[S]light differences between domain names and registered marks, such as the addition of words that describe the goods or services in connection with the mark and gTLDs, do not distinguish the domain name from the mark incorporated therein per Policy ¶ 4(a)(i).”). Therefore, the Panel agrees with Complainant and finds Respondent's disputed domain name to be identical or confusingly similar to the Complainant's ALEKS mark.

Rights or Legitimate Interests

Complainant argues that Respondent has no rights or legitimate interests in the **<alekshomeworkhelp.com>** domain name as Respondent is not commonly known by the disputed domain name and is not authorized by Complainant to use the ALEKS mark. WHOIS information can support a finding that a respondent is not commonly known by the disputed domain name. Additionally, lack of authorization to use a complainant's mark may support a finding that the respondent is not commonly known by the disputed domain name per Policy ¶ 4(c)(ii). See *Amazon Technologies, Inc. v. LY Ta*, FA 1789106 (FORUM June 21, 2018) (concluding a respondent has no rights or legitimate interests in a disputed domain name where the complainant asserted it did not authorize the respondent to use the mark, and the relevant WHOIS information indicated the respondent is not commonly known by the domain name). Complainant provides WHOIS information for Respondent indicating that Respondent is known as “Sushila Asnodkar / Projukti Web Service” and no information of the record indicates that Respondent was authorized to use the Complainant's ALEKS mark. Therefore, the Panel finds that Respondent lacks rights or legitimate interests in the disputed domain name under Policy ¶ 4(c)(ii).

Next, Complainant argues Respondent fails to use the disputed domain name in connection with a *bona fide* offering of goods and services or for a legitimate noncommercial or fair use because Respondent uses the disputed domain name's resolving webpage to offer homework cheating services for Complainant's educational programs. A respondent's attempt to divert Internet users seeking complainant's website is not a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii). See *Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (FORUM Sept. 30, 2003) (“Respondent's demonstrated intent to divert Internet users seeking Complainant's website to a website of Respondent and for Respondent's benefit is not a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) and it is not a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii).”). Complainant provides a screenshot of the resolving webpage of the disputed domain name which offers services to help students cheat on Complainant's educational programs. Therefore, the Panel finds that Respondent

does not use the disputed domain name to make a *bona fide* offering of goods or services or a legitimate noncommercial or fair use under Policy ¶¶ 4(c)(i) or (iii).

Therefore, Complainant has satisfied Policy ¶ 4(a)(ii).

Registration and Use in Bad Faith

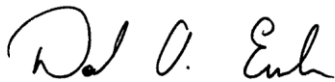
Complainant argues that Respondent registered and uses the <alekshomeworkhelp.com> domain name in bad faith because Respondent attempts to attract, for commercial gain, users to the disputed domain name where Respondent uses the disputed domain name's resolving webpage to offer homework cheating services for Complainant's educational programs. A respondent's use of a disputed domain name to divert Internet users for profit is evidence of bad faith registration and use. See *Microsoft Corporation v. Story Remix / Inofficial*, FA 1734934 (FORUM July 10, 2017) (finding bad faith registration and use under Policy ¶ 4(b)(iv) where the respondent was diverting Internet users searching for the complainant to its own website and likely profiting). Complainant argues that the homework cheating services offered by Respondent divert Internet users to Respondent's site for profit. The Panel agrees and finds that Respondent has engaged in bad faith registration and use under Policy ¶ 4(b)(iii) and (iv).

Thus, Complainant has also satisfied Policy ¶ 4(a)(iii).

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <alekshomeworkhelp.com> domain name be **TRANSFERRED** from Respondent to Complainant.



David A. Einhorn, Esq.
Arbitrator

David A. Einhorn, Panelist
Dated: July 17, 2019