

## **ADMINISTRATIVE PANEL DECISION**

Wikimedia Foundation, Inc. v. Domain Manager, USA Domain Manager  
Case No. D2014-0920

### **1. The Parties**

The Complainant is Wikimedia Foundation, Inc. of San Francisco, California, United States of America (“US”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, US  
The Respondent is Domain Manager, USA Domain Manager of Sydney, Australia.

### **2. The Domain Name and Registrar**

The disputed domain names <getawikipedia.com>, <getonwikipedia.com> and <wikipediapagecreators.com> are registered with GoDaddy.com, LLC

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 2, 2014. On June 2, 2014, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 3, 2014, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 6, 2014. In accordance with the Rules, paragraph 5(a), the due date for Response was June 26, 2014. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 27, 2014.

The Center appointed Adam Taylor as the sole panelist in this matter on July 1, 2014. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a nonprofit, charitable organisation incorporated in Florida. It was established in 2003 with the objective of encouraging the growth, development and distribution of free, multilingual, educational content. Amongst other things, the Complainant operates the well-known information website Wikipedia, which attracts 470 million unique visitors monthly. There are more than 76,000 active contributors working on more than 31 million articles in 285 languages.

The Complainant owns many trade marks for WIKIPEDIA including US trade mark no. 3,040,722 filed on September 14, 2004 in international class 41.

The disputed domain names were all acquired by the Respondent on March 17, 2014.

As of June 1, 2014, there were websites at each of the disputed domain names. Each site prominently featured the Complainant's puzzle globe logo and offered services to "create and develop" or "write and develop" a Wikipedia page "for your business" for \$799.

#### **5. Parties' Contentions**

##### **A. Complainant**

##### **Identical or Confusingly Similar**

The disputed domain names are each confusingly similar to the Complainant's trade mark. The overall impression of the designation of each of the disputed domain names is one of being connected to the trade mark of the Complainant.

Previous UDRP panels have found that a domain name containing a complainant's trade mark plus the words "get", "on" and "page" does nothing to prevent confusing similarity. Similarly, inclusion of the word "creators" in the disputed domain name <wikipediapagecreators.com> does nothing to prevent confusing similarity as it is a generic word that describes the services offered by both the Complainant and the Respondent. Indeed, the addition of the word exacerbates the confusing similarity between the Complainant's trade mark and increases the risk of confusion.

##### **Rights or Legitimate Interests**

The Complainant never authorised the Respondent to use its mark.

Use of a domain name containing a complainant's trade mark to offer services related to the complainant, without authorisation and with obvious intent to deceive, is not a *bona fide* offering of goods or services.

There is no indication that the Respondent is commonly known by any of the disputed domain names.

The Respondent is not making a legitimate noncommercial or fair use of any of the disputed domain names. The Respondent's activity is clearly commercial.

Accordingly, Respondent has no rights or legitimate interests in respect of the disputed domain names.

##### **Registered and Used in Bad Faith**

The Respondent's websites create a likelihood of confusion with the Complainant's trade mark.

Numerous previous UDRP panels under the Policy have found that, as here, use of a well-known trade mark to offer services related to those associated with the trade mark, without permission of the trade mark owner,

establishes bad faith.

The Respondent's prominent use of the Complainant's puzzle globe on its websites also creates a likelihood of confusion and, therefore, bad faith, under paragraph 4(b)(iv) of the Policy.

Additionally, bad faith exists pursuant to paragraph 4(b)(ii) of the Policy because, by registering the disputed domain names, the Respondent has obviously prevented Complainant from reflecting the mark in a corresponding domain name, and the Respondent has "engaged in a pattern of such conduct" – as shown by the Respondent's registration of the three disputed domain names.

It is inconceivable that Respondent chose the disputed domain names without knowledge of the Complainant's activities.

Accordingly, the disputed domain names were registered and are being used in bad faith

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has rights in the mark WIKIPEDIA by virtue of its registered trade marks as well as unregistered trade mark rights deriving from the extensive and worldwide use of that name.

Paragraph 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0") makes clear that the threshold test for confusing similarity under the UDRP involves a comparison between the trade mark and the disputed domain name to determine likelihood of Internet user confusion and that, in order to satisfy this test, the relevant trade mark would generally need to be recognizable as such within the domain name, with the addition of common, dictionary, descriptive, or negative terms typically being regarded as insufficient to prevent threshold Internet user confusion.

Paragraph 1.9 of WIPO Overview 2.0 adds that, in itself, the addition of merely generic, descriptive, or geographical wording to a trade mark in a domain name is normally insufficient to avoid a finding of confusing similarity and that panels have usually found the incorporated trade mark to constitute the dominant or principal component of the domain name.

Here, the Complainant's distinctive trade mark is undoubtedly the dominant component of the disputed domain names and, as indicated in paragraphs 1.2 and 1.9 of WIPO Overview 2.0, the addition of the various descriptive terms "get a", "get on" and "page creators" is insufficient to avert a finding of confusing similarity.

For the above reasons, the Panel concludes that each of the disputed domain names is confusingly similar to the Complainant's trade mark.

The Panel therefore finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

### **B. Rights or Legitimate Interests**

Paragraph 2.1 of WIPO Overview 2.0 explains the consensus view concerning the burden of proof regarding lack of rights or legitimate interests in UDRP cases:

“While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a 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 burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP [...] If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interest, the panel then weighs all the evidence, with the burden of proof always remaining on the complainant.”

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

As to paragraph 4(c)(i) of the Policy, the Respondent is offering a service which is an adjunct to the Complainant’s own service. In the Panel’s view, it is appropriate to approach this as a reseller / distributor case. The consensus view of UDRP panels – as expressed in paragraph 2.3 of WIPO Overview 2.0 – is that to establish a *bona fide* offering of goods or services in such circumstances, the Respondent must comply with certain requirements, including prominent disclosure of its relationship with the trade mark holder.

In the Panel’s view, there is no such prominent disclosure in this case; on the contrary, the websites at each of the disputed domain names is dominated by a very large version of the Complainant’s well-known puzzle globe logo. Taken together with the use of the Complainant’s trade mark in the disputed domain names, the websites give the overall impression of some sort of official connection with the Complainant. Such use of the disputed domain names could not be said to be *bona fide*.

There is no evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

The Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names and that the Complainant has therefore established the second element of paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

The Respondent has registered and used the disputed domain names to offer a service which involves creating Wikipedia pages for a fee. However, as indicated above, the Panel’s view is that there is a likelihood of confusion on the part of Internet users arising from the combination of the use of the Complainant’s trade mark in the disputed domain names together with the prominent use of the Complainant’s well-known puzzle globe logo on the Respondent’s websites. This gives the overall impression of an official connection with the Complainant.

In the Panel’s view, paragraph 4(b)(iv) of the Policy applies. By using the disputed domain names in this way, the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain by creating a likelihood of confusion with the Complainant’s trade mark.

The likelihood of confusion is not diminished by the possibility that at some point users arriving at the Respondent’s websites might realise that they are not officially connected with the Complainant. Paragraph 4(b)(iv) of the Policy is concerned with the intentional attracting of Internet users. Here, the Respondent used the disputed domain names to create “initial interest confusion” on the part of Internet users seeking the Complainant and in order to profit from at least some of that traffic. See, e.g., *National Football League Properties, Inc. and Chargers Football Company v. One Sex Entertainment Co., a/k/a chargergirls.net*, WIPO Case No. D2000-0118 and *Jardine Motors Group Holdings Limited v. Zung Fu Kuen*, WIPO Case No. D2004-0168.

Furthermore, the Respondent has not come forward to deny the Complainant's assertions of bad faith.

For all of the above reasons, the Panel finds that the Complainant has established the third element of paragraph 4(a) of the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <getawikipedia.com>, <getonwikipedia.com> and <wikipediapagecreators.com> be transferred to the Complainant.

**Adam Taylor**

Sole Panelist

Date: July 10, 2014