



American Psychological Association, Inc.)
)
)
750 First Street, N.E.)
Washington, DC)
20002-4242)
)
(Complainant))
)
v.)
)
)
KENNETH GOTTFRIED)
)
)
230 NE 26th Ave, Apt 412)
Boynton, Florida, 33435)
)
(Respondent))
_____)

Domain Name In Dispute:

americanpsychologicalassoc.com

**COMPLAINT IN ACCORDANCE WITH
THE UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY**

I. Introduction

1. This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (“UDRP Policy”), adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999 and approved by ICANN on October 24, 1999, and the Rules for Uniform Domain Name Dispute Resolution Policy (“UDRP Rules”), with an effective date of July 31, 2015, and the FORUM’s Supplemental Rules (the “Supplemental Rules”). See UDRP Rule 3(b)(i).

II. The Parties

A. Complainant

2. Complainant in this proceeding is American Psychological Association a non-profit corporation having offices at 750 First Street, N.E., Washington, DC, 20002-4242. Respondent is commonly known as APA. Founded in 1892, American Psychological Association is the largest scientific and professional organization representing psychology in the United States, with more than 118,000 researchers, educators, clinicians, consultants and students as its members. APA also has 54 divisions in subfields of psychology.

3. Complainant's contact details are:

Address: 750 First Street, N.E., Washington, DC, 20002-4242
Telephone: (202) 336-5500
Fax: (202) 218-3599
E-mail: ntandon@apa.org

4. APA¹ is the United States record owner of the trademark **AMERICAN PSYCHOLOGICAL ASSOCIATION**, U.S. Registration Nos. 3,720,419 and 2,568,980.

5. Complainant's authorized representative is:

Name: Adam Sikich, Esq.
Law Firm: Dunner Law PLLC
Address: 3243 P Street, N.W., Washington, D.C. 20007
Telephone: (202) 298-6322
Fax: (202) 403-3030
E-mail: asikich@dunnerlaw.com

6. Complainant's preferred method of communication in the administrative proceeding is:

Electronic-only material

Materials including hardcopy

Method: e-mail

Method: post

¹In the USPTO records and elsewhere, Complainant is at times referred to as "American Psychological Association" and at other times as "American Psychological Association, Inc." Some records do not include the "Inc." designation.

Address: asikich@dunnerlaw.com
Contact: Adam Sikich, Esq.

Address: Dunner Law PLLC
3243 P Street, N.W.
Washington, D.C. 20007
Contact: Adam Sikich, Esq.

B. Respondent

7. According to Wild West Domains, LLC's WHOIS query results, Respondent in this administrative proceeding is **Kenneth Gottfried**. A copy of the database search for the domain name that is the subject of this Complaint is attached as **Ex. 1**.

8. All information known to Complainant regarding how to contact Respondent is as follows: Respondent lists his address with Wild West Domains, LLC as 230 NE 26th Ave, Apt 412, Boynton, Florida 33435. Respondent's phone number is (828) 406-8760, and his e-mail address is Gallerymil@gmail.com. Respondent is also listed as the Administrative Contact for the domain.

III. The Disputed Domain Name

9. This dispute concerns the domain name **americanpsychologicalassoc.com** (the "Domain").

10. The Domain is registered with Wild West Domains, LLC, 14455 North Hayden Road, Suite 226, Scottsdale, Arizona 85260. The phone number of Wild West Domains, LLC is (480) 624-2500, and the email address is abuse@wildwestdomains.com.

11. Wild West Domains, LLC has adopted the UDRP Policy and UDRP Rules. A copy of the UDRP Policy is attached as **Ex. 2**.

IV. The Trademark Upon Which The Complaint is Based

12. This Complaint is based upon the following trademark: **AMERICAN PSYCHOLOGICAL ASSOCIATION**, which is registered under two valid and subsisting registrations with the United States Patent and Trademark Office ("USPTO"):

Registration Number 3,720,419, issued December 8, 2009, and
Registration Number 2,568,980, issued May 14, 2002.

USPTO Database printouts concerning these registrations are attached as **Ex. 3**.

13. The AMERICAN PSYCHOLOGICAL ASSOCIATION mark has been adopted and continually used in commerce by Complainant since 1892 to promote the interests of psychologists and members of scientific communities, organize and provide educational conferences, and produce and disseminate publications in the field of psychological and social sciences.

14. Complainant also uses the AMERICAN PSYCHOLOGICAL ASSOCIATION mark for a variety of additional goods and services pertaining to psychology, social sciences and research, including but not limited electronic databases, software, and interactive websites.

15. Complainant is the largest and most prestigious association of psychologists in the world, with nearly 118,000 members worldwide, including researchers, educators, clinicians, consultants, and students. Complainant also is the country's go-to authority on psychological issues in the U.S., and Complainant is dedicated to advancing the creation, communication, and application of psychological principles to benefit society and improve quality of life.

16. Throughout its more than 125-year history of using its AMERICAN PSYCHOLOGICAL ASSOCIATION mark in connection with goods and services, and the two valid and subsisting trademark registrations, Complainant has established substantial nationwide (and international) goodwill and recognition in the AMERICAN PSYCHOLOGICAL ASSOCIATION mark.

17. Each year, Complainant spends a substantial amount of money to market and advertise its products and services using the AMERICAN PSYCHOLOGICAL ASSOCIATION trademark.

In 2017 alone, Complainant spent approximately 3.8 million dollars on marketing and advertising.

18. As a result of Complainant's substantial and continuous efforts to render and promote its services under the AMERICAN PSYCHOLOGICAL ASSOCIATION trademark, and given Complainant's notoriety and prestige in the psychology field, the AMERICAN PSYCHOLOGICAL ASSOCIATION trademark has acquired significant goodwill and wide public recognition within the psychology field as a means by which Complainant and its goods and services are known to the public and their source and origin are identified.

V. Grounds on Which The Complaint is Made

A. The Domain Is Nearly Identical and Confusingly Similar to Complainant's Mark

19. Respondent's registered Domain is nearly identical to Complainant's well-known, long-used, federally-registered AMERICAN PSYCHOLOGICAL ASSOCIATION trademark. The only difference between the Domain and the AMERICAN PSYCHOLOGICAL ASSOCIATION mark is the shorthand spelling of "association" as "assoc." Such a minute difference is not enough to distinguish Respondent's Domain from Complainant's mark. *Alaska Air Group, Inc., and its subsidiary, Alaska Airlines v. Amador Holdings Corp / Alex Arrocha*, FA 1494297 (Nat. Arb. Forum June 5, 2013) (removal of letters from complainant's well-known mark cannot distinguish Respondent's domain name under Policy ¶ 4(a)(i)); *Chevron Intellectual Property LLC v. Linda Hearn*, FA 1409285 (Nat. Arb. Forum Nov. 15, 2011) (abbreviation of complainant's CHEVRON mark to CHEV in the domain name chevoil.com did not distinguish the disputed domain name from complainant's mark).

B. Respondent Has No Rights or Legitimate Interests in the Domain

20. Complainant has not licensed nor otherwise authorized Respondent to use the Domain.

21. Upon information and belief, Respondent is not and has never been commonly known by the Domain either as a business, an individual, or an organization.

22. Respondent is using the Domain to lure people to his www.americanpsychologicalassoc.com website (the “Website”). Respondent displays the mark “AMERICAN PSYCHOLOGICAL ASSOC.” in conspicuous letters at the top of the Website.

23. Respondent is not making a legitimate noncommercial use of the Domain as contemplated in UDRP Policy ¶ 4(c)(iii), because Respondent uses the Domain to solicit financial contributions for himself. The home page of the Website features “Donate” links where one can submit online payments to Respondent. See **Ex. 4**. No context is given for the purpose or destination of the “donations,” so one is left to assume Respondent is keeping the money for himself. Such use does not constitute a *bona fide* offering of goods or services under the UDRP Policy nor is such use a legitimate noncommercial use.

24. Respondent is not making a legitimate fair use of the Domain. Respondent’s Website using the Domain is a barrage of defamatory statements accusing Complainant of murdering children and destroying families. The following representative statements appear throughout Respondent’s Website as highlighted in **Ex. 5**:

- “The American Psychological Association: Murders of Children, Parents and Destroyers of Families. FACT.”
- “I will state this again in very simple terms, the APA is an organization that intentionally kills children, parents and destroys families forever and that statement is exactly based on their own empirical data with decades of experience.”
- “They [APA] are murderers plane [sic] and simple.”

25. As the largest and oldest association dedicated to advancing the creation, communication, and application of psychological principles to benefit society and improve quality of life of psychologists, it goes without saying that these publicly promoted statements are false statements of fact that harm Complainant.

26. Complainant supports free speech rights, but not at the expense of exploiting Complainant's goodwill to attract people to a website comprised of false and damaging statements about Complainant. UDRP panels have concluded that it is not legitimate to use Complainant's own trademark as a platform for criticism about Complainant. *See Lloyd Irvin v. [Registrant]*, FA 1677800, (July 1, 2016); *Dar Al-Arkan Real Estate Development Company v. AnonymousSpeech AnonymousSpeech*, D2012-0692 (WIPO June 4, 2012). The case *AASKI Technology, Inc. v. Technology Department / Cloud Service, Inc.*, FA 1807368 (Oct. 26, 2018) is telling in this regard. In *AASKI Technology*, respondent registered and used domain names that were found confusingly similar to complainant's trademark, and respondent used these domains to lead users to defamatory content, accusing complainant of fraud and collusion. There, respondent used "highly charged" headings and other language to denigrate complainant, such as "The AASKI Group Has Clearly Committed Fraud" and "The AASKI Group Has Clearly Committed Extortion." While the panel acknowledged respondent's right to freedom of speech generally, it determined that respondent was not entitled to use domain names confusingly similar to complainant's trademark and link it to "material that denigrates that trademark and those who are readily associated with it." The instant case only differs from *AASKI Technology* in that Complainant's statements here are far more egregious – accusing Complainant of murder and killing children.

27. Respondent could have chosen any domain name for its Website but chose one nearly identical to the well-known AMERICAN PSYCHOLOGICAL ASSOCIATION mark. If a domain name is used for the purpose of free speech or criticism and it does not on its face indicate this purpose (e.g., apasucks.com), and instead, the domain appears to be one that leads to a legitimate site owned and controlled by Complainant, then initial interest confusion will result, and that is not permitted under the UDRP Policy. *See Dykema Gossett PLLC v DefaultData.com and Brian Wick*, FA 97031 (Nat. Arb. Forum May 29, 2001).

28. Respondent's use of the Domain infringes Complainant's rights in the AMERICAN PSYCHOLOGICAL ASSOCIATION mark because Respondent's Domain is confusingly similar to Complainant's longstanding, well-known mark; Respondent's registration of the Domain post-dates Complainant's prior use and registration of the AMERICAN PSYCHOLOGICAL ASSOCIATION mark; and Complainant has not authorized Respondent's use of the Domain. Such infringing use does not constitute a *bona fide* offering of goods or services.

29. The totality of Respondent's damaging false statements and commercial activities under the Domain do not give Respondent a legitimate right or interest in the Domain. That Respondent could have conveyed the same thoughts on a website that does not use the Domain reveals that Respondent is exploiting the goodwill associated with the AMERICAN PSYCHOLOGICAL ASSOCIATION mark to attract attention to his Website.

C. The Domain Was Registered In and Is Being Used In Bad Faith

Registration

30. Respondent registered the Domain on October 21, 2018—sixteen years after Complainant first registered the AMERICAN PSYCHOLOGICAL ASSOCIATION mark and

over 125 years after Complainant began using the trademark in connection with psychology-related goods and services.

31. Respondent knew of Complainant when Respondent registered the Domain. Respondent had contacted staff and board members of Complainant in 2016 to complain of Complainant's policies. When Respondent failed to get the level of attention he thought he deserved from Complainant, Respondent created his Website.

32. Respondent deliberately chose a confusingly similar Domain to the AMERICAN PSYCHOLOGICAL ASSOCIATION mark to attract people to his Website—a site used to solicit money and defame Complainant.

33. Respondent should reasonably have anticipated that Complainant would object to registration and use of the Domain.

Use

34. As noted in paragraph 23 above, Respondent has operated a live website utilizing the Domain without Complainant's consent in an effort to generate revenue from mysterious "donate" links. No charity or non-profit organization is mentioned as the recipient of the donations, so upon information and belief Respondent is keeping all donations made on his Website.

35. On information and belief, Respondent has capitalized on Complainant's reputation and goodwill by using Complainant's trademark without permission.

36. Not only has Respondent capitalized on Complainant's goodwill to attract people to his Website, Respondent uses the Website to defame and disparage Complainant. The Website is peppered with appalling statements – all presented as fact – that Complainant murders children and destroys families. As the panel in *AASKI Technology* noted, "Use of a disputed domain

name to post defamatory comments about complainant and its business is evidence of registration and use in bad faith under Policy ¶ 4(a)(iii) and such conduct has frequently been held to be so."

37. Complainant has tried to resolve this dispute amicably; however, Respondent has refused to cooperate. Complainant's outside trademark policing vendor, MarkMonitor, sent a December 24, 2018 email to Respondent notifying Respondent of Complainant's rights in the AMERICAN PSYCHOLOGICAL ASSOCIATION mark (and others), explaining that Respondent's use of the Domain was unauthorized, and requested that Respondent stop using the Domain. See **Ex. 6**.

38. Respondent replied to the December 24, 2018 MarkMonitor email with the statement "If you feel that you must come after me please let me know so that I can prepare subpoenas for all the board members of the APA." See **Ex. 7**. Respondent continues to use the Domain to this day.

39. As the largest scientific and professional organization geared towards advancing the application of psychological knowledge to improve the safety of children, the statements appearing on the Website are disparaging and highly damaging to Complainant's reputation and the goodwill associated with the AMERICAN PSYCHOLOGICAL ASSOCIATION mark.

40. Complainant recognizes Respondent's right to express views critical of Complainant's policies and activities; however, Respondent may not do so using false statements of fact on a Website where Respondent raises money for himself, under a confusingly similar name.

41. Complainant has invested and will continue to invest substantial resources in the goodwill it already has in its AMERICAN PSYCHOLOGICAL ASSOCIATION trademark. Respondent's continued use of the Domain will continue to harm Complainant's efforts in this regard.

42. By failing to relinquish a domain in which Respondent has no legitimate rights, particularly given the money Respondent solicits using the Domain and the defamatory and disparaging comments on the Website against Complainant, Respondent's continued ownership and use of the Domains is an act of bad faith.

43. Based on the foregoing, Respondent's actions and inactions constitute bad faith registration and use.

VI. Remedy Sought

44. In accordance with Paragraph 4(i) of the UDRP Policy and UDRP Rule 3(b)(x), and for the reasons described in Section V above, Complainant requests that the Panel issue a decision that the **americanpsychologicalassoc.com** domain name be transferred to Complainant American Psychological Association, Inc.

VII. Administrative Panel

45. Complainant is seeking a panel of one arbitrator.

VIII. Other Legal Proceedings

46. No legal proceedings have been commenced or terminated in connection with the domain name **americanpsychologicalassoc.com**.

IX. Mutual Jurisdiction

47. In accordance with UDRP Rule 3(b)(xii), Complainant will submit, only with respect to any challenge that may be made by Respondent to a decision by the Administrative Panel to transfer or cancel the Domains, to the jurisdiction of the federal courts in Scottsdale, Arizona, the location of the principal office of the concerned registrar Wild West Domains, LLC.

X. Certification

48. Complainant agrees that its claims and remedies concerning the registration of the Domains, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against (a) the FORUM and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) ICANN, as well as their directors, officers, employees and agents.

49. Complainant certifies that the information in this Complaint is to the best of Complainant's knowledge complete and accurate, this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Dated: March 14, 2019

Respectfully Submitted,



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