



DECISION

Wellpath Holdings, Inc. v. Jon Kimball / icapital holdings
Claim Number: FA2002001885318

PARTIES

Complainant is Wellpath Holdings, Inc. (“Complainant”), represented by Wade K. Sims, United States. Respondent is Jon Kimball / icapital holdings (“Respondent”), represented by Jason Schaeffer of ESQwire.com, P.C. The Domain Name Law Firm, New Jersey, United States.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <wellpath.com>, registered with Moniker Online Services LLC.

PANEL

The undersigned certifies that they have as acted independently and impartially and to the best of their knowledge have no known conflict in serving as Panelists in this proceeding.

Diane Thilly Cabell, David A. Einhorn and John J. Upchurch as Panelists.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on February 24, 2020; the FORUM received payment on February 24, 2020.

On February 25, 2020, Moniker Online Services LLC confirmed by e-mail to the FORUM that the <wellpath.com> domain name is registered with Moniker Online Services LLC and that Respondent is the current registrant of the name. Moniker Online Services LLC has verified that Respondent is bound by the Moniker Online Services LLC 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 February 25, 2020, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of March 20, 2020 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@wellpath.com. Also on February 25, 2020, 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.

A timely Response was received and determined to be complete on March 20, 2020.

A timely Additional Written Statement was received by Complainant on March 27, 2020.

On March 31, 2020, pursuant to Complainant's request to have the dispute decided by a three-member Panel, the FORUM appointed Diane Thilly Cabell, David A. Einhorn and John J. Upchurch as Panelists.

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. Respondent requests that the Panel find that this action constitutes Reverse Domain Name Hijacking (RDNH).

PARTIES' CONTENTIONS

A. Complainant

1. Complainant is a provider of healthcare administration and management services. Complainant has rights in the WELLPATH mark based on registration of the mark with the United States Patent and Trademark Office ("USPTO") (*e.g.* Reg. No. 5,869,725, registered Sep. 24, 2019). *See* Compl. Annex B. The <wellpath.com> domain name is identical or confusingly similar to Complainant's WELLPATH mark as it consists of Complainant's distinctive mark and the ".com" top-level domain ("TLD").
2. Respondent has no rights or legitimate interest in the <wellpath.com> domain name. Respondent is not commonly known by the disputed domain name and Respondent is not a licensee nor authorized to use Complainant's mark. Respondent does not use the disputed domain name to make a *bona fide* offering of goods or services or legitimate noncommercial or fair use as Respondent fails to make active use of the disputed domain name, which has resolved to a parked webpage or pay-per-click links since May 21, 2001.
3. Respondent registered and uses the <wellpath.com> domain name in bad faith. Respondent registered the <wellpath.com> domain name with the intent to sell the disputed domain name to a subsequent holder of the WELLPATH mark. Respondent registered the <wellpath.com> domain name primarily for the purpose of preventing a subsequent holder of the WELLPATH mark from reflecting that mark in a domain name and engages in a pattern of bad faith conduct. Respondent attracts Internet users for commercial gain by creating a likelihood of confusion with Complainant's mark. Respondent fails to make active use of the <wellpath.com> domain name. Despite Respondent's registration of the domain name prior to the establishment of

Complainant's trademark rights in WELLPATH, Respondent registered the domain name with the bad faith intent to sell to a subsequent trademark holder and currently uses the disputed domain name in bad faith.

B. Respondent

1. Respondent has rights and a legitimate interest in the disputed domain name. The <wellpath.com> domain name consists of generic or descriptive words. Respondent profits from the generic value of the words without intending to take advantage of Complainant's rights in the mark. Respondent registered the domain name as a part of Respondent's business of reselling domain names consisting of generic terms. Respondent's use of the domain name to display pay-per-click links related to the generic terms shows rights and legitimate interest in the domain name.
2. Respondent did not register and is not using the disputed domain name in bad faith. Respondent purchased the domain name in good faith as it is comprised of generic terms and purchased the domain name twenty years prior to Complainant's trademark rights. Respondent's offers to sell the domain name are not evidence of bad faith registration and use. Respondent did not register the disputed domain name to take advantage of Complainant's trademark right.

C. Complainant's Additional Written Statement

1. WELLPATH, or WELL PATH, has no generic or descriptive meaning, particularly with respect to medical, healthcare, and/or behavioral health services.
2. Maintaining a parked webpage at a disputed domain name is sufficient to make a finding of the respondent's bad faith registration and use, regardless of the entity that initiates the parked content.
3. Complainant is guilty of Reverse Domain Name Hijacking (RDMH) by filing this Complaint.

FINDINGS AND DISCUSSION

1. The Panel elects to decide this case entirely on the basis that Complainant has not shown bad faith registration. The exceptions recognized by WIPO are not asserted here. They involve the targeting of a specific competitor, not any potential future competitor. Respondent registered the <wellpath.com> domain name in 2001, some 18 years prior to Complainant's filing its trademark, and thus could not have registered the domain with bad faith knowledge of rights then owned by Complainant.
2. The Panel determines the issues of bad faith use, and the first and second elements, need not be decided. There is no basis to accept Complainant's assertion that Respondent registered or used the <wellpath.com> domain name in bad faith.
3. The Panel determines that there has been no RDNH and denies Respondent's prayer for such a finding. While the filing of this Complaint may have been ill-advised, the Panel does not believe that Complainant, a legitimate trademark owner, filed the Complaint (and Additional Submission) in bad faith with the knowledge that it could not prove the requisite elements of the Policy.

DECISION

The Complainant having failed to establish all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.

Accordingly, it is Ordered that the <wellpath.com> domain name be **RETAINED** by Respondent.

By unanimous Decision:
Diane Thilly Cabell, David A. Einhorn, John J. Upchurch

[Click Here](#) to return to the main Domain Decisions Page.

[Click Here](#) to return to our Home Page