



DECISION

Labelbox, Inc. v. Anthony Sarkis

Claim Number: FA2208002007017

PARTIES

Complainant is **Labelbox, Inc.** (“Complainant”), represented by **Kathleen S. Fennessy of Barnes & Thornburg LLP**, Indiana. Respondent is **Anthony Sarkis** (“Respondent”), California.

REGISTRAR AND DISPUTED DOMAIN NAME

The disputed domain name is **<lablebox.com>**, registered with **Google LLC**.

PANEL

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

David L. Kreider, Chartered Arbitrator (UK), as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on August 3, 2022; the FORUM received payment on August 3, 2022.

On August 4, 2022, Google LLC confirmed by e-mail to the FORUM that the **<lablebox.com>** domain name is registered with Google LLC and that Respondent is the current registrant of the name. Google LLC has verified that Respondent is bound by the Google LLC registration agreement and has agreed

to resolve domain disputes brought by third parties under ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On August 4, 2022, the FORUM served the Complaint and all Annexes, including a Written Notice of Complaint, setting a deadline of August 24, 2022 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@lablebox.com. Also on August 4, 2022, the Written Notice of 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 August 15, 2022.

The Complainant submitted timely an Additional Submission on August 18, 2022, in compliance with Rule 7 of the Supplemental Rules, which the Panel has considered in its decision.

On August 18, 2022, under Complainant's request to have the dispute decided by a single-member Panel, the FORUM appointed David L. Kreider 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.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant

The Complainant, Labelbox, Inc., is the owner of the trademark LABELBOX. Since 2018, the Complainant offers customers “a training data platform as a service” (“PaaS”), that is, a computer software technical platform (i.e., on networked servers located off the customer premises accessed via the Internet, or so-called cloud-computing), used with various goods and services related to software, including software for data and workflow creation, collection, analysis and management, and to create and manage artificial intelligence (“AI”) systems.

The Respondent, Anthony Sarkis, registered the <lablebox.com> domain name on December 21, 2021 (the “Disputed Domain Name”), which is an intentional misspelling of the Labelbox Mark combined with and the generic top-level domain “.com”, and is using the Disputed Domain Name to divert and redirect Internet users to a competitor’s website. The competitor, Diffgram, provides PaaS services that overlap and compete with the Complainant’s services.

B. Respondent

The Respondent asserts that the Disputed Domain Name “clearly” does not disrupt the Complainant’s normal operations, as the domain name was registered eight months prior and the Complainant has waited until now to commence these UDRP administrative proceedings.

The Respondent argues that “there is no confusion”, as the Disputed Domain Name directs Internet users to a site (“Respondent’s website”), that “clearly identifies itself as ‘Diffgram’.” The Response alleges:

“The [Respondent’s website], as shown in the bottom of [the Complainant’s] exhibit, contrasts Diffgram against labelbox directly”;

“We do not benefit from their brand in anyway - in fact we contrast ourselves directly against [the Complainant’s] inferior brand”, and

“We have a clear legitimate interest, since our software also labels boxes. I have been writing about this since 2017, one year ahead of them, well before labelbox (*sic*) started”.

C. Additional Submissions

The Complainant’s Additional Submission further alleges that the Respondent’s use of a confusingly similar domain name to direct Internet traffic to the web site of a third-party competitor constitutes “typosquatting” and is purposely designed to redirect Internet traffic seeking Complainant’s online services to a competing website and, thus, constitutes bad faith use and registration of the Disputed Domain Name.

FINDINGS

The Complainant’s LABELBOX Mark was registered with the United States Patent and Trademark Office on June 18, 2019 (Registration Number 5,779,165).

The Respondent registered the Disputed Domain Name <lablebox.com> on December 21, 2021, utilizing Contact Privacy, Inc., a privacy or proxy service, to conceal the Respondent's identity.

The Disputed Domain Name misspells the Complainant's LABELBOX registered Mark, transposing the letters "l" and "e", and constitutes "typosquatting" to mislead and misdirect Internet users seeking the Complainant's official website.

The Disputed Domain Name resolves to the Respondent's website, which promotes Diffgram, which offers for sale under a PaaS business model, "open source training data platform" services which directly compete within a specialized technical niche with those offered by the Complainant.

The Respondent admits in his Response that the intended purpose of the Disputed Domain Name and the Respondent's website is to "contrast" Diffgram against Labelbox and the latter's "inferior brand".

The Respondent's repeated use in the Response of "we" and "us", when referring to Diffgram, and the Respondent's use of a Diffgram email address, "anthonysarkis@diffgram.com", reflects an identity of interest between the Respondent, Anthony Sarkis, and the Complainant's competitor, Diffgram.

The Respondent registered and is using the Disputed Domain Name in bad faith, to engage in typosquatting by intentionally misspelling the Complainant's LABELBOX Mark to target the Complainant's existing and potential customers and misdirect them to the Respondent's website offering the services of Diffgram, a direct competitor of Labelbox, for Diffgram's and the Respondent's unfair commercial advantage.

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 these 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.

Identical and/or Confusingly Similar

The Disputed Domain Name differs from the Complainant's LABELBOX registered Mark by the transposition of the letters "l" and "e". The addition of the top-level domain ".com" is an administrative requirement of no significance to determining confusing similarity.

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. UDRP panels have consistently held that misspelling a complainant's mark and adding a generic top-level domain cannot negate the confusingly similar aspects of Respondent's domain name under Policy ¶ 4(a)(i). *Victoria's Secret v. Zuccarini*, FA 95762 (Nat. Arb. Form Nov. 18, 2000) (finding that, by misspelling words and adding letters to words, a

respondent does not create a distinct mark but renders the domain name confusingly similar to the complainant's marks).

The first element of Policy ¶ 4(a)(i) is satisfied.

Rights or Legitimate Interests

The Complainant alleges it has been using the LABELBOX Marks in commerce since 2018, well before the Respondent registered the Disputed Domain Name on December 21, 2021, and that the Disputed Domain Name has never been used for any substantive or legitimate purpose and has only been used to redirect users to a competitor's services.

The Panel finds that the Respondent, who purports to speak for and on behalf of the Complainant's direct competitor, Diffgram, admits in the Response that his intended purpose and use of the Disputed Domain Name and the Respondent's website is to "contrast" Diffgram against Labelbox and the latter's "inferior brand".

Using a domain name identical or confusingly similar to the LABELBOX Mark to attract Internet users to the Respondent's website for the Respondent's unfair commercial benefit, does not qualify as a *bona fide* offering of goods or services under Policy ¶ 4(c)(i), or a legitimate non-commercial or fair use of the domain name under Policy ¶ 4(c)(iii). *See Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (Nat. Arb. 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); *see also Ripple Labs Inc. v. NGYEN NGOC PHUONG THAO*, FA 1741737 (Nat. Arb. Forum Aug. 21, 2017) ("Respondent uses the [disputed] domain name to divert Internet users to Respondent's website...

confusing them into believing that some sort of affiliation exists between it and Complainant... [which] is neither a bona fide offering of goods or services under Policy ¶ 4(c)(i) nor a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii).”)

The second element of Policy ¶ 4(a)(ii) is satisfied.

Registration and Use in Bad Faith

The Panel observes that the Respondent’s repeated use in the Response of “we” and “us”, when referring to the Complainant’s third-party competitor, Diffgram, and the Respondent’s use of a “diffgram.com” email address, unambiguously demonstrates an identity of interest between the Respondent, Anthony Sarkis, and the competitor entity, Diffgram. The Panel notes that the Complainant, Labelbox, and Diffgram, compete head-to-head within a specialized technical niche, i.e., “a training data platform” following a PaaS business model.

the Respondent admits in the Response that his intended purpose and use of the Disputed Domain Name and the Respondent’s website is to contrast Diffgram “against” Labelbox and the latter’s “inferior brand”. The Panel finds the Respondent’s reference in the Response to the Complainant’s brand disparaging – and intentionally so.

The Panel finds that the Respondent registered and is using the Disputed Domain Name in bad faith to engage in typosquatting, to target the Complainant’s existing and potential customers and, through the misspelling of the Complainant’s LABELBOX Mark, misdirect them to the Respondent’s website offering the services of Diffgram, a direct competitor of Labelbox, for Diffgram’s and the Respondent’s unfair commercial advantage.

That the Respondent registered the Disputed Domain Name via a privacy or proxy service to conceal his identity, standing alone and viewed in isolation, would not be sufficient to demonstrate bad faith. Under the facts, however, by engaging in typosquatting as a subterfuge to unfairly mislead the Complainant's actual and prospective customers and redirect them to a direct competitor's website for the purpose of "contrasting" (that is, "disparaging and maligning") the Complainant's LABELBOX brand, the Respondent's use of a proxy service to conceal his identity can only be viewed as a further indication of the Respondent's bad faith.

The Panel finds that the third element of Policy ¶ 4(a)(iii) has been satisfied.

DECISION

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

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

David L. Kreider, Panelist

Dated: August 20, 2022