

ADMINISTRATIVE PANEL DECISION

Software In The Public Interest Incorporated v. Daniel Pocock Case No. D2024-0770

1. The Parties

The Complainant is Software In The Public Interest Incorporated, United States of America (“United States”), represented by ADV IP S.r.l., Italy.

The Respondent is Daniel Pocock, United States, self-represented.

2. The Domain Names and Registrar

The disputed domain names <debian.chat>, <debiancommunity.org>, <debian.day>, <debian.family>, <debian.finance>, <debian.giving>, <debiangnlinux.org>, <debian.guide>, <debian.news>, <debian.plus>, <debianproject.community>, <debianproject.org>, <debian.team>, and <debian.video> are registered with Gandi SAS (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 20, 2024. On February 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 27, 2024, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 4, 2024, providing the registrant and contact information disclosed by the Registrar and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 5, 2024. On March 13, 2024, the Respondent sent an informal email communication to the Center.

The Center verified that the Complaint together with the amended 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 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 2, 2024. On April 1, 2024, the Respondent requested an extension of the due date for filing a Response. On April 2, 2024, the due date for Response was extended to April 6,

2024, pursuant to paragraph 5(b) of the Rules. The Complainant objected to any further extension. The Respondent requested a further Response extension on April 3, 2024. On April 5, 2024, the Response due date was further extended to April 10, 2024. The Response and the amended Response were filed with the Center on April 11, 2024. The Parties sent further email communications to the Center on April 12, 2024. On April 19, 2024, the Center informed the Parties that it would proceed to Panel appointment.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on April 19, 2024. 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 corporation established in 1997 under the laws of the State of New York, United States and headquartered in Albany, New York. The Complainant has tax-exempt status and receives donations and provides fiscal and administrative support to organizations that develop open-source computer software and hardware, as described on the Complainant's website at "www.spi-inc.org". The Complainant was originally created to allow the "Debian Project" to accept donations to develop community-supported Debian GNU/Linux, a family of open-source operating systems and related software and firmware, which is free and open-source or optionally licensed on a non-free basis. The Complainant operates a website at "www.debian.org" (established in 1999) devoted to the Debian Project (the "Debian Project website"), which displays a DEBIAN logo consisting of the name in stylized letters and a swirl device.

The Complainant has several trademark registrations for DEBIAN as a word mark, including the following:

Mark	Jurisdiction	Registration Number	Registration Date	Goods or Services
DEBIAN (word)	United States	2301362	December 21, 1999	Computer software; IC 9
DEBIAN (figurative: stylized letters and swirl device)	United States	4587367	August 19, 2014	Computer operating systems; Computer utility programs; IC 9
DEBIAN (word)	International (multiple countries designated)	1084122	June 20, 2011	Computer utility and operating system software; IC 9

The Complainant asserts that the DEBIAN brand is the best-known in "the open-source software landscape and Linux distributions in particular", as DEBIAN is the basis of almost all the most popular Linux distributions in the world, including Ubuntu, Mint, MX Linux, Pop! OS, Zorin, antiX, KDEneon, Elementary, Lite, Vanilla, Kali, and Tuxedo.

The fourteen disputed domain names were all registered with the same Registrar on dates ranging from March 31, 2020, to May 3, 2023, by the same person, the Respondent Daniel Pocock. Most were registered in 2022. The Respondent listed as the administrative or technical contact a company called Software Freedom Institute SA in Lausanne, Switzerland. The Panel notes that the "Software Freedom Institute" has a website in multiple languages at "www.softwarefreedom.institute" (the "SFI website") that publishes commentary about proprietary and open-source software (including software in the DEBIAN family) and also offers commercial "voice, video and business messaging solutions" and advertises that the "Software Freedom Institute helps customers with a range of Linux and BSD platforms". The "Leadership" page of the SFI website features a photograph and biography of the Respondent Mr. Pocock, who is described as the Director of the Software Freedom Institute and "a Debian Developer". The SFI website includes a "Contact" page inviting contact via email.

The Complainant demonstrates that some of the disputed domain names have resolved to parking pages with error messages or advertising links, while others have resolved to websites with menus and graphics

evidently copied from the Complainant's DEBIAN Project website and pages with videos and commentaries by the Respondent and other developers. At the time of this Decision, the Panel finds that the disputed domain names resolve to a mix of pages with content that appears to copy the Complainant's DEBIAN Project website, and pages that present commentary by the Respondent, including commentary about this UDRP proceeding. One of the disputed domain names, <debian.video>, shows videos of the Respondent at a DEBIAN development conference in 2013, as well as audio recordings from software development conferences in 2012. Most websites at the disputed domain names display the Complainant's trademarked "swirl" logo in the upper left corner and a footer claiming copyright in the name of the Software Freedom Institute described above, the Respondent "and others" as well as the following message with hyperlinks to the Complainant's DEBIAN Project website (the hyperlinks are removed here):

"Debian is a registered trademark of Software in the Public Interest, Inc. The Debian open use logo (swirl logo) is a trademark of Software in the Public Interest, Inc and is freely used under license."

Actually, the Complainant's linked trademark policy on the DEBIAN Project website includes the following provision:

"When You Can NEVER Use the Debian Trademarks Without Asking Permission

1. You cannot use Debian trademarks in any way that suggests an affiliation with or endorsement by the Debian project or community, if the same is not true.
2. You cannot use Debian trademarks in a company or organization name or as the name of a product or service.
3. You cannot use a name that is confusingly similar to Debian trademarks.
4. You cannot use Debian trademarks in a domain name, with or without commercial intent."

The Complaint attaches a "Statement on Daniel Pocock" (the Respondent) that the Complainant released on November 17, 2021, and published on the DEBIAN Project website. It reads in part as follows:

"Debian is aware of a number of public posts made about Debian and its community members on a series of websites by a Mr Daniel Pocock, who purports to be a Debian Developer.

Mr Pocock is not associated with Debian. He is neither a Debian Developer, nor a member of the Debian community. He was formerly a Debian Developer, but was expelled from the project some years ago for engaging in behaviour which was destructive to Debian's reputation and to the community itself. He has not been a member of the Debian Project since 2018. He is also banned from participating in the Debian community in any form, including through technical contributions, participating in online spaces, or attending conferences and/or events. He has no right or standing to represent Debian in any capacity, or to represent himself as a Debian Developer or member of the Debian community.

In the time since he was expelled from the project, Mr Pocock has engaged in an ongoing and extensive campaign of retaliatory harassment by making a number of inflammatory and defamatory posts online, in particular on a website which purports to be a Debian website. The contents of these posts involve not only Debian, but also a number of its Developers and volunteers. He has also continued to misrepresent himself as being a member of the Debian Community in much of his communication and public presentations. Please see this article [link] for a list of the official Debian communication channels. Legal action is being considered for, amongst other things, defamation, malicious falsehood and harassment.

Debian stands together as a community, and against harassment. We have a code of conduct that guides our response to harmful behaviour in our community, and we will continue to act to protect our community and volunteers. Please do not hesitate to contact the Debian Community team if you have concerns or need support. In the meantime, all of Debian's and its volunteers' rights are reserved."

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant observes that all of the disputed domain names contain the DEBIAN mark in its entirety, which is a coined name in use for thirty years as a trademark, and add descriptive elements relevant to the products and services covered by the mark. Thus, the Complainant asserts that all of the disputed domain names are confusingly similar to its registered DEBIAN mark. The Respondent is not associated with the Complainant (he was expelled years before registering any of the disputed domain names) and has no permission to use the mark in the disputed domain names. The Debian Trademark Policy published on the Complainant's website at "www.debian.org", of which the Respondent had actual knowledge, expressly forbids using the DEBIAN trademarks in a domain name "with or without commercial intent". The Complainant argues that the Respondent is not known by a corresponding name and is not making a legitimate non-commercial or fair use of the disputed domain names. The Complainant concludes that the Respondent registered and used the disputed domain names in bad faith, "as a form of retaliation" in his ongoing dispute with the Complainant.

The Complainant cites a previous UDRP decision, *Software in the Public Interest, Inc., The Debian Project, and Debian.ch v. IT Manager, Free Software Contributors Association*, WIPO Case No. [D2022-1524](#). There, the panel found bad faith where the respondent formed a confusingly similar domain name, <debian.community>, from the DEBIAN mark and an apparently relevant generic top-level domain name. Given the facts in that proceeding, the individual respondent (whose name was redacted) was likely the same as in the current proceeding.¹

B. Respondent

After repeatedly asking for, and receiving, extensions of time to file a Response, the self-represented Respondent belatedly submitted material characterized as a Response and Amended Response with comments about alleged abuses of volunteers by various corporations and nonprofits. The remarks challenge the Complainant's assertion of confusing similarity in this proceeding and claim a legitimate interest in using the disputed domain names to discuss the Complainant. The Respondent also claims that the Complaint was brought to harass the Respondent and his family, in violation of Rule 15(e) ("Reverse Domain Name Hijacking").

Although the Response and Amended Response were late and do not conform to the file limits set out in the Supplemental Rules, the Panel accepts them for the limited purpose of addressing the issues relevant to this proceeding.

In addition, the Respondent sent an email to the Center claiming that the Complainant was harassing and defaming him and violating his privacy, in violation of Swiss criminal law, and that any dissemination of the Complainant's "documents" by the Center would be a crime. The Respondent has not established that any particular act in furtherance of this UDRP proceeding is a violation of criminal law, and the proceeding continues to be conducted according to the Policy, Rules, and Supplemental Rules.

On April 30, 2024, while this Decision was in process, the Respondent sent an email notifying the Center that the Respondent had filed to stand for election for the European Parliament as a member from Ireland. The Respondent states that the Complaint "appears to be a cyber attack", possibly designed to interfere with the European election, and asks the Center to suspend the UDRP proceeding to avoid "election interference". The Respondent does not indicate when he filed as a candidate, but the Panel notes that the nominations for

¹The cited decision refers to a Swiss trademark registration number 782335 for DEBIAN as a word mark granted to the Software Freedom Institute SA (with which the Respondent is associated) on June 8, 2022. The Panel notes, however, that since the UDRP decision was published, that trademark registration has been terminated, effective November 13, 2023.

the Parliamentary elections opened on April 22, 2024, while the UDRP Complaint was submitted two months earlier, on February 20, 2024. Consequently, the Panel does not find the Respondent's allegation to be factually grounded and declines to suspend the proceeding. In any event, as detailed below, the Complaint may be decided on its merits on the available record.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) and the respondent has no rights or legitimate interests in respect of the domain name;
- (iii) and the domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark (the registered DEBIAN word mark, and the figurative logo prominently featuring the DEBIAN name) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the word mark is reproduced within all of the disputed domain names. Accordingly, the disputed domain names <debian.chat>, <debian.day>, <debian.family>, <debian.finance>, <debian.giving>, <debian.guide>, <debian.news>, <debian.plus>, <debian.team>, and <debian.video> are identical to the mark for the purposes of the Policy, whereas the remaining disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms within the disputed domain names <debiancommunity.org>, <debiangnulinix.org>, <debianproject.community>, and <debianproject.org> may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant

evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise. It is undisputed in this proceeding that the Respondent was formerly a DEBIAN Developer but was expelled from the community and its technical work years before registering any of the disputed domain names. Several of the disputed domain names have been associated with the Respondent's websites that cite and link to the Complainant's trademark policy, which clearly forbids using the DEBIAN marks in domain names without permission, with or without commercial intent. And as noted in the footnote above, while the Software Freedom Institute, with which the Respondent is associated, briefly held a Swiss trademark registration for DEBIAN as a word mark, that registration has been terminated. Moreover, the Panel considers that even the Respondent websites that contain overt criticism of the Complainant could not justify the use of those disputed domain names as nominative fair use for criticism sites. None of the disputed domain names includes derogatory or critical terms to avoid the high risk of confusion through impersonation, which is enhanced here by the presentation on the associated website of the Complainant's swirl logo and the absence of adequate identification of the site operator. See [WIPO Overview 3.0](#), section 2.6.

Thus, the Panel finds no evidence that the Respondent has rights or legitimate interests with respect to any of the disputed domain names.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel finds that the Respondent had actual knowledge of the Complainant's distinctive and long-established DEBIAN mark as a former DEBIAN Developer who prominently displays the Complainant's trademarks on the Respondent's websites and links to the Complainant's DEBIAN trademark policy. Despite those explicit references to the Complainant's trademark policy, the Respondent ignored the provision requiring permission to use the DEBIAN mark in domain names, as every one of the disputed domain names violates that provision.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. As described above, all of the disputed domain names suggest affiliation with the Complainant, even those used for critical commentary by initially impersonating the Complainant. Some of the disputed domain names have been used to promote the Respondent's activity in software development and implementation (as with <debian.video> and multiple references on other Respondent websites to the Software Freedom Institute, which advertises the commercial services of that company, of which the Respondent is Director). These uses are consistent with the example of bad faith in the Policy, paragraph 4(b)(iv), attracting Internet users to other sites for commercial gain.

Even with respect to the disputed domain names that resolved earlier to an error message, as per the evidence submitted by the Complainant, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of these disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the

degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or using false contact details (noted to be in breach of its registration agreement).

[WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's DEBIAN trademark and the composition of the disputed domain names and finds that in the circumstances of this case the previous passive holding of some of the disputed domain names does not prevent a finding of bad faith under the Policy. The Panel notes the findings of the three-person panel in WIPO Case No. [D2022-1524](#), cited above, that DEBIAN is a distinctive, coined mark widely used for thirty years and evidently formed from the first syllables of the names of the Complainant organization's founders, "Debra Lynn" and "Ian Murdock"), where the addition of apparently relevant terms in the domain name enhances rather than avoids confusion with the trademark holder. That is the case here for the disputed domain names: terms such as "guide", "plus", "family", and "giving" are either ambiguous or affirmatively suggest an association with the Complainant open-source organization. It is difficult to conceive a legitimate, non-infringing use for those disputed domain names, and the Respondent has not demonstrated one.

The Panel finds that the Complainant has established the third element of the Policy with respect to all fourteen of the disputed domain names.

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 <debian.chat>, <debiancommunity.org>, <debian.day>, <debian.family>, <debian.finance>, <debian.giving>, <debiangnulinix.org>, <debian.guide>, <debian.news>, <debian.plus>, <debianproject.community>, <debianproject.org>, <debian.team>, and <debian.video> be transferred to the Complainant.

8. Reverse Domain Name Hijacking or Harassment

The Respondent cites Rule 15(e), which directs the Panel to declare if it finds that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding, "in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder". The Respondent bases this claim on the facts that the Complainant publicly expelled the Respondent from the Complainant's nonprofit organization and that the Respondent then registered the disputed domain names, using some of them for criticism of the Complainant. The Respondent infers that the Complainant is "seeking revenge for whistleblowing".

This sequence of events does not change the facts detailed above, however, that the Respondent registered and used the disputed domain names in bad faith, creating a likelihood of confusion as to source or affiliation with the Complainant's trademark, for commercial as well as critical purposes, and with full knowledge of the Complainant's trademark and trademark policy. It is entirely possible for the Respondent to publicize his views without abusing the Complainant's trademark rights or the UDRP.

The Panel finds that the Complaint in this instance is well-grounded on the evidence in the available record and does not reflect bad faith or an abuse of the administrative proceeding.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: May 3, 2024