

ADMINISTRATIVE PANEL DECISION

Bal du Moulin Rouge S.A. v. Ole Goethe
Case No. D2023-1364

1. The Parties

Complainant is Bal du Moulin Rouge S.A., France, represented by Casalonga Avocats, France.

Respondent is Ole Goethe, Norway.

2. The Domain Name and Registrar

The disputed domain name <lamachinedumoulinrouge.club> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2023. On March 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on April 3, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 3, 2023.

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 Respondent of the Complaint, and the proceedings commenced on April 14, 2023. In accordance with the Rules, paragraph 5, the due date for the Response was May 4, 2023. Respondent did not submit any formal response but on May 5, 2023, the Respondent sent an informal communication. Accordingly, the Center notified the Parties that it will proceed to Panel Appointment on May 5, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on May 10, 2023. 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

Complainant operates the Moulin Rouge musical dance theater that was established in Paris, France in 1889, offering musical dance entertainment for visitors from around the world. It is the proprietor of numerous registrations for its MOULIN ROUGE mark, including the following:

- French trademark No. 3707257 for LA MACHINE DU MOULIN ROUGE (word mark), registered on July 2, 2010 for services in classes 41 and 43;
- International trademark No. 1016676 for MOULIN ROUGE (word mark), registered on June 12, 2009 for goods and services in classes 3, 9, 11, 14, 16,18, 20, 21, 24, 25, 32, 33 and 41 designating, *inter alia*, Norway;
- French trademark No. 1311105 for MOULIN ROUGE (word mark), registered on November 1, 1985 for goods and services in classes 1-45.

Complainant has registered several domain names incorporating its MOULIN ROUGE mark, including <moulin-rouge.com>, <moulinrouge.com>, <moulinrougecafe-paris.com>, <lemoulinrouge.cafe>.

Since 2010, Complainant has operated a space called “La Machine du Moulin Rouge”, which is adjacent to the Moulin Rouge cabaret building. This building offers four distinct spaces for rent for events attended by up to 1,000 persons. In this connection, since 2010, Complainant has operated a website at the domain name <lamachinedumoulinrouge.com>.

Respondent is a private individual residing in Norway. According to information provided by Complainant, he is professionally active as a designer.

The disputed domain name was registered on November 16, 2022. At the time of this Decision, it did not resolve to an active website. The record contains evidence that it previously resolved to a website featuring pay-per-click (“PPC”) links.

5. Parties’ Contentions

A. Complainant

Complainant’s contentions may be summarized as follows:

Under the first element, Complainant states that the MOULIN ROUGE mark has been used continuously in France in connection with its famous cabaret since 1889. The cabaret was immortalized by the painter Henri de Toulouse-Lautrec, and many international stars have performed on its stage. Complainant’s LA MACHINE DU MOULIN ROUGE mark is identically reproduced within the disputed domain name, and the top-level domain “.club” indicates Complainant’s activities. The disputed domain name is similar to Complainant’s well-known MOULIN ROUGE marks.

Under the second element, Complainant states that it has no relationship with Respondent. Complainant has never consented to Respondent’s use and reservation of its marks in any manner, including in connection with the disputed domain name, which reproduces Complainant’s registered trademarks. The disputed domain name does not include the name of Respondent. Some of the PPC links relate to Complainant’s business, for example, a link named “Café” redirects Internet users to the website of a competitor of Complainant.

Under the third element, Complainant states that its MOULIN ROUGE marks are well-known trademarks that have been extensively used for more than a century in the field of theater, musical entertainment, for derived products and entertainment venues including bars. Complainant's marks were registered long before the registration of the disputed domain name. Complainant's mark LA MACHINE DU MOULIN ROUGE has been used for entertainment services, restaurant, bars, coffee shop and clubs since 2010. Respondent had knowledge of Complainant's marks when registering the disputed domain name. The disputed domain name directs Internet users to a PPC page with links including to a competitor's website. Finally, email servers have been activated for the disputed domain name. Therefore, Respondent could send and receive emails using the disputed domain name, including for fraudulent purposes.

Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply formally to Complainant's contentions. In his email of May 5, 2023, Respondent stated that "the domain is intended to be a tribute to Moulin Rouge the Musical and its social activities, and, it was not registered or acquired primarily for the purpose of selling or renting. Here is my domain marketplace: <https://dan.com/domain-seller/engaged>. *Not on the list".

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name 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

Complainant has provided evidence establishing that it has trademark rights in the LA MACHINE DU MOULIN ROUGE mark through registration in France. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

In comparing Complainant's LA MACHINE DU MOULIN ROUGE mark with the disputed domain name, the Panel finds that the disputed domain name is identical to this mark.

It is the well-established view of UDRP panels that a generic Top Level Domain such as ".club" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, respondent's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not authorized by Complainant and has no rights in the LA MACHINE DU MOULIN ROUGE mark.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent states that the disputed domain name was registered as a tribute to Complainant's Moulin Rouge cabaret theater. However, there is no evidence available to support this contention. Respondent is not commonly known by the disputed domain name. There is no evidence of legitimate noncommercial use or a *bona fide* offering of goods or services, or of demonstrable preparations to use the disputed domain name in connection with such an offering. See [WIPO Overview 3.0](#), section 2.2.

The Panel finds that the use of a disputed domain name (reflecting Complainant's mark) to resolve to a PPC website such as the one used by Respondent does not represent a *bona fide* offering as at least one of the links competes with or capitalizes on the reputation and goodwill of Complainant's mark. See [WIPO Overview 3.0](#), section 2.9. See also *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#); *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#).

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain name. At the time of registration of the disputed domain name, Complainant has been known by its MOULIN ROUGE mark for over 120 years; its rights in its LA MACHINE DU MOULIN ROUGE mark had been established for more than a decade. The disputed domain name is identical to Complainant's LA MACHINE DU MOULIN ROUGE trademark. Accordingly, it is clear that Respondent had Complainant's mark in mind when registering the disputed domain name. Moreover, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity, as in this case, can by itself create a presumption of bad faith on the part of Respondent. See [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds the evidence in the record establishes that Respondent used the disputed domain name to resolve to a website featuring PPC links, including those related to Complainant's business. Absent any

evidence of mitigating factors such as efforts by Respondent to avoid links that target Complainant's mark, such use is clearly evidence of bad-faith use of the disputed domain name. See [WIPO Overview 3.0](#), section, 3.5.

The Panel has considered Respondent's statements to the effect that the disputed domain name was registered as a tribute to Complainant and that the disputed domain name has not been listed for sale. The Panel finds there is no evidence available to support the first statement. The Panel further notes that, in connection with the circumstances that by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website, the absence of an offer for sale does not, by itself, support a finding that the disputed domain name was registered in good faith. See [WIPO Overview 3.0](#), section 3.1.

Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name and, under the circumstances, the Panel does not find any such use plausible.

The Panel finds that Complainant has established the third element under 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 name, <lamachinedumoulinrouge.club>, be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: May 24, 2023