

ADMINISTRATIVE PANEL DECISION

Kevin A. Landau, Esq., The Landau Group, PC v. Dick Masterson,
MenAreBetterThanWomen.com

Case No. D2023-1373

1. The Parties

The Complainants are Kevin A. Landau, Esq., United States of America (“United States”) and The Landau Group, PC, United States, represented by Zachary R Landau, United States.

The Respondent is Dick Masterson, MenAreBetterThanWomen.com, United States.

2. The Domain Name and Registrar

The disputed domain name <kevinlandau.com> is registered with Moniker Online Services, LLC (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 31, 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 (Moniker Online Services, LLC)¹ and contact information in the Complaint. The Center sent an email communication to the Complainant on April 18, 2023, 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 the same date.

The Center verified that the Complaint together with 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

¹ The Complaint lists Moniker Online Services, LLC as a Respondent. It seems, however, that Moniker touches on the dispute only inasmuch as it provided the domain name registration services for the disputed domain name, and communicated with the Complainant’s representative in an ordinary fashion when the Complainant sought assistance with the troubles presented by the disputed domain name. Because the record does not contain specific allegations against Moniker touching on the elements of the Policy, the Panel disregards this party and instead considers there to be one Respondent herein, namely, Dick Masterson, MenAreBetterThanWomen.com (who, as discussed below, is also known as Dax Herrera).

Dispute Resolution Policy (the “Supplemental Rules”). The Respondent sent an informal communication on April 19, 2023. That informal communication was an email to the Center containing one sentence – “Sorry, why am I getting this email?”

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2023. The Response was filed with the Center on May 9, 2023. The Complainant submitted a Supplemental Filing – which the Panel accepts – on May 15, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on May 23, 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

The Complainants are an attorney and his law firm. The law firm owns a United States trademark registration for the mark KEVIN A LANDAU (Reg. No. 5,797,835, registered on July 9, 2019). The registration certificate shows an alleged date of first use of this mark in commerce of July 7, 2003.

According to the Whois records, the disputed domain name was registered on May 29, 2018. Despite the Whois records listing one Dick Masterson as the registrant of the disputed domain name, the Complainant identifies Dax Herrera as the Respondent, and the Respondent self-identifies as Dax Herrera in the Response. It appears there is no dispute that Dax Herrera and Dick Masterson are the same person. Accordingly, the Panel will decide this matter with such assumption.

The Respondent used the disputed domain name to set up a website that he says “exists to catalog the legal cases of Kevin A. Landau, including criticisms by other lawyers and professionals, and detail the heavy losses suffered by his clients who were not equipped to gauge the consequences of his legal strategies”.

5. Parties’ Contentions

A. Complainants

The Complainants contend that the disputed domain name is identical or confusingly similar to the Complainants’ trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

The Complainants assert more specifically that the Respondent was an adverse party to a lawsuit that the Complainants pursued on behalf of a client. The Complainants contend that the website the Respondent has published using the disputed domain name is a gripe site intended to harm Mr. Landau in his professional and personal capacity, seeking to humiliate, embarrass and cause financial and professional harm. The website purportedly contains slanderous content and blatant disinformation and is a “diatribe of *ad hominem* attacks and defamatory and awful statements”. The Complainants spend no insignificant portion of the Amended Complaint detailing the various ways in which they believe the assertions on the website are incorrect and defamatory.

And the Complainants provide insight into what they believe is part of the animus for the Respondent developing the website. They provide evidence showing that the Respondent – a podcaster and author – created the website in part as a “commercial opportunity through the process of levying disingenuous statements, and charging his subscribers the ‘privilege’ of observing such indignities”. The Complainants assert that the Respondent “mockingly broadcasts the present WIPO complaint” via social media and gives substantive attention to Mr. Landau and this matter on the Respondent’s podcast. And – according to the

Complainants – this activity brings in revenue for the Respondent: he uses Patreon² to generate over USD 16,000 per month from 3,000 subscribers.

B. Respondent

The respondent generally objects to each contention of the Complainants. More specifically, the Respondent denies the Complainants have valid trademark rights to assert, claims rights and legitimate interests in the disputed domain name, and denies that he registered and used the disputed domain name in bad faith.

As to the first element, the Respondent asserts more particularly that KEVIN A LANDAU is not a trademark, but the name of a lawyer. The Respondent asserts that the mark is therefore “bogus”. He claims that the Complainants have registered the mark “just to file this complaint because [they do not] like the criticism”. And in any event, according to the Respondent, his conduct is protected by the fair use doctrine and the First Amendment.

Concerning rights and legitimate interests, the Respondent contends that the website is not in use for commercial purposes but exists for criticism – “to catalog the legal cases of Kevin A. Landau, including criticisms of other lawyers and professionals, and detail the heavy losses suffered by his clients who were not equipped to gauge the consequences of his legal strategies”.

And as for bad faith registration and use, the Respondent repeats many of his assertions and provides conclusory blanket denials of the factors set out in paragraph 4(b) of the Policy, together with reassertions that the website is for criticism and opinions.

6. Discussion and Findings

A. Procedural Issue – Consolidation of Multiple Complainants

Panels have articulated principles in accordance with Paragraph 10 of the Rules governing the question of whether a complaint filed by multiple complainants may be brought against one or more respondents. These criteria encompass situations in which: (i) the complainants either have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants’ individual rights in a similar fashion; and (ii) it would be equitable and procedurally efficient to permit the consolidation. The burden of showing that consolidation is proper falls on the Complainants.

The Complainants have provided sufficient evidence to support consolidating them. They share a legal interest and grievance. Specifically, the Complainant Kevin A. Landau is the owner and managing partner of The Landau Group, PC, which owns the trademark KEVIN A LANDAU. In this way, the Complainants have a relevant legal interest and rights that are adversely affected by the Respondent’s conduct and have a common grievance. Both of the Complainants are the target of common conduct by the Respondent that has affected their individual legal interests. Further, it is procedurally efficient to consolidate them.

Accordingly, the Panel will consolidate the Complainants.

B. Identical or Confusingly Similar

This element requires the Panel to consider two issues: first, whether the Complainants have rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark. This element under the Policy functions primarily as a standing requirement. WIPO Overview of

² Patreon is a membership platform operated by Patreon, Inc., that provides business tools for content creators to run a subscription service. It helps creators and artists earn a monthly income by providing rewards and perks to their subscribers.

“<https://en.wikipedia.org/wiki/Patreon>” (retrieved June 17, 2023).

WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainants have demonstrated rights in the KEVIN A LANDAU mark by providing evidence of a trademark registration for the mark.

The Panel has undertaken limited factual research into matters of public record that it considers useful to assessing the case merits and reaching a decision, which is appropriate in accordance with section 4.8 of the [WIPO Overview 3.0](#) and the general powers of a panel articulated in paragraphs 10 and 12 of the Rules.

As a result of this research, the Panel credits the assertion set forth in the Complaint that Mr. Landau’s name has been in use in commerce and functioning as a trademark. For example, results from the Wayback Machine show the Complainant law firm’s website displaying the name KEVIN LANDAU at least as early as November 24, 2005. The New York State Unified Court System’s search services³ shows Mr. Landau as having been admitted to practice in that state since March 16, 2011. The State Bar of Michigan’s records⁴ show him as having been admitted there since 2003. His LinkedIn page⁵ shows outside counsel roles going back to 2005.

The disputed domain name incorporates the KEVIN A LANDAU mark in its entirety. This is sufficient for showing identity under the Policy.

The Panel finds that the Complainants have established this first element under the Policy.

C. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainants have made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainants make that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainants). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainants assert, among other things, that: (1) the Respondent has not been known by the Complainants’ KEVIN A LANDAU mark, (2) the Respondent is not affiliated or related to the Complainants and is not a licensee or otherwise authorized to use the KEVIN A LANDAU trademark, (3) the Complainants have not authorized the Respondent to use the KEVIN A LANDAU mark in the disputed domain name, (4) there is no evidence that the Respondent is commonly known by the disputed domain name, and (5) the use of the disputed domain name has been abusive and intended to cause harm, and therefore does not amount to use for a *bona fide* offering of goods or services.

The Panel finds that the Complainant has made the required *prima facie* showing. And, despite the Respondent’s protestations that the disputed domain name has been used for “no commercial purpose” but solely for criticism protected by fair use and the First Amendment, the Panel finds such assertions unpersuasive. Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim of rights or legitimate interests by the Respondent to the disputed domain name under paragraph 4(c) of the Policy.

The Respondent predicates his claim of having rights or legitimate interests in the disputed domain name on the basis that his website provided nothing more than free speech and thus constituted a legitimate gripe site sufficient to fall within the ambit of being a “legitimate noncommercial use” under paragraph 4(c)(iii) of the Policy.

³ “<https://iapps.courts.state.ny.us/attorneyservices/search?1>”

⁴ “<https://sbm.reliaguide.com/home>”

⁵ “<https://www.linkedin.com/in/kevin-landau-esq-9a285714/>”

To the contrary, the Panel finds it more likely than not that the Respondent has been substantially motivated by commercial gain in maintaining the website at the disputed domain name and generating traffic for his podcast and other social media in connection with the fallout the disputed domain name causes. One need only go to the Respondent's Twitter page and see the "pinned" tweet that appears there as of the date of this decision. The text of the tweet – viewable to any internet user and particularly to the Respondent's 26,000 followers – reads:

"Kevin Landau files another 80-page WIPO thing against me, YouTube deletes my account, "Not Really Watching" mode, Guardians of the Galaxy 3 on acid, Sports Illustrated Martha Stewart, haunted retirement homes, Fake Homeless, and banging imaginary women."

"<https://patreon.com/posts/83175119>"

Note the Patreon link in close proximity to the content. Social media creators use Patreon to make money. There is no reason to couple a discussion of the disputed domain name with a Patreon link other than to make money.

If the Respondent had nothing whatsoever to personally gain, whether financially or otherwise, from the criticism of the Complainant – and if the disputed domain name was not an exact reproduction of the relevant mark, then the Panel might be more solicitous of the Respondent's view. See *Splunk Inc. v. Domain Privacy Service FBO Registrant/ Charles Keane*, WIPO Case No. [D2014-0555](#). But that is not the case here. The registration and use of the disputed domain name is calculated to stir up controversy. The Panel finds that the Respondent uses that controversy to drive traffic to his Patreon-associated content. That is commercial effort that does not give rise to rights and legitimate interests on the part of the Respondent in the disputed domain name.

The Panel emphasizes that in reaching its decision, it has not sought to ascertain whether the criticisms of the Complainants by the Respondent are true, and the Panel has not otherwise evaluated the merits of the assertions on the website. No doubt the free speech principles articulated in the First Amendment of the United States Constitution provide a broad avenue for public criticism. But the key issue the Panel has dealt with here is whether the available record shows the registration and use of the disputed domain name was a "legitimate noncommercial or fair use of the domain name, without intent for commercial gain". The Panel finds it was not.

The Complainants have established this second element under the Policy.

D. Registered and Used in Bad Faith

The Policy requires that the Complainants show that the disputed domain name was registered and used in bad faith. There is no dispute that the Respondent knew of the Complainants prior to registering the disputed domain name. He was involved in litigation adverse to the Complainants' client, and indeed admits that the website was created to provide criticism of the Complainants. This sort of targeting is sufficient for a finding of bad faith registration.

Bad faith use is clear from the creation and promotion of the website found at the disputed domain name in an effort to profit. As discussed above, the Panel finds that the Respondent was motivated by the desire for commercial gain, specifically via Patreon traffic led there by ongoing discussion of the disputed domain name and the resulting dispute. In the Panel's view, this is bad faith use of the disputed domain name.

And even putting aside the commercial intent, the reproduction of the mark exactly in a domain name does not support a claimed fair use as it runs afoul of the impersonation test. See generally [WIPO Overview 3.0](#) section 2.5.1 and *SwissCare Europe v. michael click, Active OutDoors LLC*, WIPO Case No. [D2022-1496](#) (and cases cited therein).

Accordingly, the Panel finds that the Complainants have established this third element under 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 <kevinlandau.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: June 17, 2023