

## **ADMINISTRATIVE PANEL DECISION**

### **Watch Tower Bible and Tract Society of Pennsylvania v. Vincent Moore Case No. D2023-2034**

#### **1. The Parties**

The Complainant is Watch Tower Bible and Tract Society of Pennsylvania, United States of America (“United States”), represented by Ruggiero McAllister & McMahon LLC, United States.

The Respondent is Vincent Moore, United Kingdom, self-represented.

#### **2. The Domain Name and Registrar**

The disputed domain name <thejw.org> is registered with IONOS SE (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 9, 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 (1&1 Internet Limited) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 15, 2023, the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint/amended Complaint. The Complainant filed an amended Complaint on May 18, 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 the Respondent of the Complaint, and the proceeding commenced on May 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2023. The Response was filed with the Center on June 7, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on June 26, 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**

### **A. Complainant**

The Complainant is a nonprofit corporation formed in 1884 in the United States. It supports the worldwide religious, educational, and charitable activity of Jehovah's Witnesses, which includes publishing Bibles, Bible-based publications, and other religious and educational materials.

The Complainant has been using its JW trade mark (the "Trade Mark") since 1931 in connection with providing educational services and associated materials relating to the tenets of Jehovah's Witnesses.

The Complainant is the owner of registrations for the Trade Mark in several jurisdictions worldwide, including United States registration No. 5321955, with a registration date of October 31, 2017.

The Complainant has also registered and used the domain name <jw.org> since 1999 in respect of the Complainant's website, which averages more than 2 million visitors per day.

### **B. Respondent**

The Respondent is an individual located in the United Kingdom.

### **C. The Disputed Domain Name**

The disputed domain name was registered on February 5, 2020.

### **D. Use of the Disputed Domain Name**

The disputed domain name resolves to a website that contains content critical of the Complainant (the "Website").

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

The Complainant contends specifically that the Respondent is not making any legitimate or fair use of the disputed domain name, as the disputed domain name illegitimately impersonates the Complainant for the purpose of misleading and diverting Internet users in search of the Complainant's website and educational services and materials to the Respondent's unrelated Website. The Complainant contends that the disputed domain name itself does not in any way signal to potential visitors that the Website contains critical content.

The Complainant contends further that the use of the definite article "the" in the disputed domain name (and also the Respondent's use of the slogan "the" definite-article JW website" prominently at the top of the Website) signals nothing about critical content and only serves to mislead potential visitors into believing that the disputed domain name leads to the Complainant's website, or "the" one and only Jehovah's Witnesses website.

As regards bad faith, the Complainant relies upon the decision in *Netblocks Group v. Collin Anderson*, WIPO Case No. [D2020-2240](#), in contending that the use of the disputed domain name to impersonate the Complainant for the purpose of misleading and diverting Internet users "constitutes registration and use in bad faith, which cannot be cured by the content of the Respondent's [W]ebsite".

## B. Respondent

The Respondent contends that he has not registered and used the disputed domain name in order to impersonate the Complainant. The Respondent contends that the Complainant in its teachings and theology views the definite article “the” as significant, and that the Respondent has chosen to use the definite article “the” in the disputed domain name and on the Website in order to parody the Complainant’s teachings.

The Respondent asserts that he has not registered and used the disputed domain name for commercial purposes, that the Website is not a commercial website, and it does not have a donation page.

The Respondent contrasts the substantial daily Internet traffic on the Complainant’s website with the handful of daily visitors to the Website, and contends that it would be immediately obvious to members of the public and Jehovah’s Witnesses on visiting the Website that it is not the official website of the Complainant.

## 6. Discussion and Findings

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the generic Top-Level Domain “.org”, the disputed domain name incorporates the entirety of the Trade Mark, prefaced by the word “the” (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7).

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

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

The central issue in this proceeding is whether the Respondent is able to establish, for the purposes of the Policy, that he is making a legitimate noncommercial or fair use of the disputed domain name.

Section 2.6 of [WIPO Overview 3.0](#) (under the heading “Does a criticism site support respondent rights or legitimate interests?”), states as follows:

“As noted above, UDRP jurisprudence recognizes that the use of a domain name for fair use such as noncommercial free speech, would in principle support a respondent’s claim to a legitimate interest under the Policy.

To support fair use under UDRP paragraph 4(c)(iii), the respondent’s criticism must be genuine and noncommercial; in a number of UDRP decisions where a respondent argues that its domain name is being used for free speech purposes the panel has found this to be primarily a pretext for cybersquatting, commercial activity, or tarnishment.

Panels find that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark (*i.e.*, <trademark.tld> (including typos)); even where such a domain name is used in relation to genuine noncommercial free speech, panels tend to find that this creates an impermissible risk of user confusion through impersonation. In certain cases involving parties exclusively from the United States, some panels applying US First Amendment principles have found that even a domain name identical to a trademark used for a *bona fide* noncommercial criticism site may support a legitimate interest.

Where the domain name is not identical to the complainant’s trademark, but it comprises the mark plus a derogatory term (*e.g.*, <trademarksucks.tld>), panels tend to find that the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site if such use is *prima facie* noncommercial, genuinely fair, and not misleading or false. Some panels have found in such cases that a limited degree of incidental commercial activity may be permissible in certain circumstances (*e.g.*, as “fundraising” to offset registration or hosting costs associated with the domain name and website).”

The Panel finds that the Respondent’s criticism of the Complainant on the Website is genuine and noncommercial, and not pretextual for cybersquatting, commercial activity or tarnishment.

The disputed domain name is not identical to the Trade Mark – it consists of the Trade Mark prefaced by the word “the” – but neither does it consist of the Trade Mark together with a derogatory term.

Whilst the use of the definite article “the” in the disputed domain name and on the Website might be understood by a Jehovah’s Witness as parody, the Respondent’s evidence in this regard is not convincing, and certainly it is unlikely in any event that any such parody would be readily apparent to Internet users who are not Jehovah’s Witnesses.

The decision relied upon by the Complainant (set out in Section 5.A. above) is not directly on point, as it was a decision involving domain names identical to the complainant’s relevant trade mark.

In the present proceeding, the Panel finds that it would be readily apparent to Internet users (including Jehovah’s Witnesses) upon visiting the Website that it is not the Complainant’s website, but is rather a website critical of the Complainant.

In all the circumstances, the Panel finds that a holistic approach assessing the totality of factors in this case<sup>1</sup> supports the Respondent’s claim to a right or legitimate interest for the purposes of the second element under paragraph 4(a) of the Policy.

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<sup>1</sup> Notably in this regard, see *Everytown for Gun Safety Action Fund, Inc. v. Contact Privacy Inc. Customer 1249561463 / Steve Coffman*, WIPO Case No. [D2022-0473](#), stating: “the use of an “impersonation test” is an important factor to be considered in cases of claimed free expression involving a domain name that is identical or nearly identical to another’s trademark along with other factors that panels have focused on, such as (i) the genuineness and nature of the criticism or commentary, (ii) the possible pretextual nature of the respondent’s website, (iii) the commercial or noncommercial aspects of the respondent’s website, (iv) the nature of the domain name itself potentially including any additional terms or plays on words, (v) the use of disclaimers, and (vi) other factors that could inform whether a respondent is using the disputed domain for bona fide noncommercial criticism concerning a complainant or to take advantage of a complainant’s mark in a bad faith or abusive way for the benefit of a respondent.”

### **C. Registered and Used in Bad Faith**

In light of the Panel's finding under Section 6.B. above, it is not strictly necessary for the Panel to make any finding in respect of bad faith.

The Panel nonetheless considers that the Respondent's acknowledged use of the disputed domain name in respect of his criticism Website does not amount to bad faith registration and use for the purposes of the third element under paragraph 4(a) of the Policy.

### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: July 10, 2023