

ADMINISTRATIVE PANEL DECISION

Sight and Sound Ministries, Inc. v. Philip Harbuck, Sight&Sound Films
Case No. D2022-3119

1. The Parties

Complainant is Sight and Sound Ministries, Inc., United States of America (the “United States” or “US”), represented by Gibbel Kraybill & Hess LLP, United States.

Respondent is Philip Harbuck, Sight&Sound Films, United States.

2. The Domain Name and Registrar

The disputed domain name <sightandsoundfilms.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 23, 2022. On August 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 24, 2022, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on August 25, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed the amendments to the Complaint on August 25, 2022 and September 6, 2022.

The Center verified that the Complaint together with the amendment to the 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 September 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 29, 2022. Respondent did not submit any Response. Accordingly, the Center notified Respondent’s default on October 3, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on October 17, 2022. 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 owns and operates a theatrical services company that since 1975 has been in the business of performing, producing, and recording live public theatre events and productions related to Christian religious stories. Complainant offers its theatrical services through its official <sight-sound.com> domain name and website. Complainant owns valid and subsisting registrations for the SIGHT & SOUND trademark in the United States, including the Trademark for SIGHT & SOUND (Reg. No. 3859775), with the earliest priority dating back to September 1, 1975. Each standard character trademark cited by Complainant was filed on the basis of acquired distinctiveness under Section 2(f) of the Lanham Act. On May 27, 2022, Complainant filed a US trademark application for the SIGHT & SOUND FILMS on an intent-to-use basis.

Respondent registered the disputed domain name on October 22, 2014. At the time this Complaint was filed, the disputed domain name redirected to the <philipdangerfilms.com> domain name and associated "Philip Danger Films" website, which advertises "We specialize in heirloom wedding films" and "Or 2022 Wedding Packages start at [USD]6000." Respondent's website also includes several sample wedding films made by Respondent, as well as email, telephone and Instagram contact information for Respondent.

5. Parties' Contentions

A. Complainant

Complainant asserts ownership of the SIGHT & SOUND trademark and has adduced evidence of trademark registrations in the United States with earliest priority dating back to September 1, 1975. The disputed domain name is confusingly similar to Complainant's SIGHT & SOUND trademark, according to Complainant, because it "uses the base of Complainant's family of marks ("SIGHT AND SOUND") and also its common law mark ("SIGHT AND SOUND FILMS")."

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on the fact that the disputed domain name redirects to a different domain and website and Respondent's "Philip Danger Films" website. Complainant asserts that Respondent "is not known by the disputed domain name, or its component parts, and has not shown preparation for legitimate commercial activity or the offering of goods or services."

Complainant argues that Respondent has registered and used the disputed domain name in bad faith based solely on the longstanding and well-known nature of Complainant SIGHT & SOUND trademark.

"Complainant is well-known by and associated with its registered and common law marks." According to Complainant, "Respondent's registration ... creates a likelihood of confusion with Complainant's registered and common law marks and creates an inference of affiliation with or endorsement of Respondent's website, goods and services, when none exists."

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii. The disputed domain name has been registered and is being used in bad faith.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file its Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the SIGHT & SOUND trademark has been registered in the United States with priority dating back to September 1, 1975. Thus, the Panel finds that Complainant's rights in the SIGHT & SOUND trademark have been established pursuant to the first element of the Policy.

The remaining question then under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's SIGHT & SOUND trademark. In this case, the Panel considers the disputed domain name confusingly similar to Complainant's SIGHT & SOUND trademark because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the trademark is contained in its entirety within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar..."). In regards to gTLDs, such as ".com" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The combination with the term "films" does not prevent a finding of confusing similarity between Complainant's SIGHT & SOUND trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not prevent a finding of confusing similarity under the first element"); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) ("Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant's [ATT trademark]"); *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) ("[T]he addition of the letters 'hbg' to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark."). Indeed, the Panel concurs with Complainant that the additional term "films" does not dispel the confusing similarity between Complainant's SIGHT & SOUND trademark and the disputed domain name.

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy. Accordingly, the Panel need not address Complainant's asserted common law trademark rights in the SIGHT & SOUND FILMS mark with respect to the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, a respondent fails to come forward with any relevant evidence, a complainant is generally deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1.

Complainant has argued generally that Respondent's redirection of the disputed domain name to Respondent's "Philip Danger Films" website does not constitute a legitimate interest. Complainant has also argued generally that Respondent "is not known by the disputed domain name, or its component parts, and has not shown preparation for legitimate commercial activity or the offering of goods or services." Indeed, the Whois data revealed by the Registrar establishes that Respondent continues to use a "sightandsoundfilms" Gmail email address. In addition, a simple Internet search of the terms "Philip Harbuck" and "Sight & Sound" reveals replete hits, including Respondent's ostensible social media profiles (including LinkedIn, YouTube, and Pinterest), as well as third party media coverage (including WeddingWire.Com and BuzzFile), all depicting, advertising, or otherwise referencing Respondent's wedding videography services operating under the name "Sight & Sound Films LLC." However, without more, it is not possible for the Panel to independently confirm the currency, validity, or legitimacy of such publicly available evidence, which could have otherwise suggested Respondent may currently enjoy rights in the disputed domain name in connection with a *bona fide* offering of videography services under Paragraph 4(c)(i) of the Policy. See [WIPO Overview 3.0](#), Section 2.11. (Panels tend to assess respondent rights or legitimate interests in the present, *i.e.*, with a view to the circumstances prevailing at the time of the filing of the complaint. Panels will often also consider evidence of previous legitimate use under the third element of the Policy.)

In view of the foregoing, and particularly in the absence of any rebuttal response or evidence from Respondent, the Panel is unable to conclude that Complainant has established the second element of the Policy, but at the same time is unable to definitively state that the Respondent has shown evidence of a legitimate interest in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion

with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

Complainant's sole argument under the third element of the Policy is based upon the asserted longstanding and well-known nature of Complainant's SIGHT & SOUND trademark. According to Complainant, it "is well-known by and associated with its registered and common law marks." Furthermore, "Respondent's registration ... creates a likelihood of confusion with Complainant's registered and common law marks and creates an inference of affiliation with or endorsement of Respondent's website, goods and services, when none exists."

Where a complainant's trademark is widely known, including in a particular industry, or highly specific, and a respondent cannot credibly claim to have been unaware of complainant, panels have inferred that respondents knew, or should have known, that their registration would be identical or confusingly similar to a complainant's trademark. [WIPO Overview 3.0](#), section 3.2.2.

In this case, Complainant has proffered the following evidence to support its argument that its unregistered SIGHT & SOUND FILMS trademark has acquired distinctiveness and is well-known: (i) viewership statistics and print advertising statistics for Complainant's global public launch of Sight & Sound Films on June 17, 2022; (ii) Internet traffic for Complainant's "www.sight-sound.com/films" webpage; (iii) social media follower statistics for Sight & Sound Films on Facebook and Instagram; (iv) trailer viewership statistics for the Sight & Sound Films feature film *I Head the Bells*; and (v) hyperlinks to media coverage for Sight & Sound Films all published in 2022.

In addition, Complainant has proffered the following evidence to support its argument that its registered SIGHT & SOUND trademark is well known: (i) Complainant's SIGHT & SOUND trademark registrations citing priority dating back to September 1, 1975; (ii) Complainant's incorporation records for Sight & Sounds, LLC with the Pennsylvania Department of State with an entity creation date in 2020; (iii) examples of use of Complainant's SIGHT & SOUND trademark in various contracts involving Complainant's theatrical productions; (iv) Complainant's annual theatrical viewership statistics totaling over 1 million people; (v) Complainant's website traffic for "www.sight-sound.com" totaling over 5,000,000 unique page views in the first six months of 2022; (vi) over 18,000 reviews of Complainant on Google; (v) and sales statistics for Complainant's streaming platform located on its "www.sight-sound.com/tv" web page.

However, this Panel is not convinced that such evidence leads to the conclusion that Respondent had Complainant's SIGHT & SOUND trademark in mind when Respondent registered the disputed domain name, or that Respondent registered the disputed domain name in order to exploit and profit from Complainant's trademark rights. First, each of Complainant's standard character SIGHT & SOUND trademark registrations were registered pursuant to Section 2(f) of the Lanham Act. While the Panel has already recognized Complainant's 2(f) registrations as valid marks for the purposes of establishing standing under the first element of the Policy, this is nevertheless an indication that the SIGHT & SOUND trademarks were considered descriptive even if they have by now acquired distinctiveness for trademark registration purposes.

Second, Complainant fails to address, or appears to have overlooked, the above-described publicly available evidence depicting, advertising, or otherwise referencing Respondent's wedding videography services operating under the name "Sight & Sound Films LLC." Neither this evidence, nor Respondent's "Philip Danger Films" website, contain anything to suggest that Respondent has specifically targeted in bad faith either Complainant or its SIGHT & SOUND trademark. Rather, it seems to the Panel that Respondent likely selected the terms "sight" and "sound" to describe Respondent's wedding videography services. Moreover, Respondent's "Philip Danger Films" website appears to offer wedding videography services absent any particular religious focus. It is also noted that the bulk of the evidence offered by Complainant focused on 2020 to the present day, leaving the Panel without much information or evidence applicable to Respondent's initial registration and use of the disputed domain name on October 22, 2014 or through the intervening years. Thus, it is unclear whether, or the extent to which, Complainant's SIGHT & SOUND trademarks were well-known in 2014. Respondent's contact information is plainly available on Respondent's "Philip Danger

Films” website, as well as through a multitude of social media profiles found in a simple Internet search, and it is not clear whether Complainant attempted to contact Respondent prior to filing its Complaint.

Ultimately, the overriding objective of the Policy is “to curb the abusive registration of domain names in the circumstances where the registrant is seeking to profit from and exploit the trademark of another”.

Match.com, LP v. Bill Zag and NWLAWS.ORG, WIPO Case No. [D2004-0230](#). Nevertheless, it is paramount that panels decide cases based on the very limited scope of the Policy. *Id.* The Policy provides a remedy only in cases where the complainant proves that the domain name “has been registered and is being used in bad faith”. After careful consideration of the totality of facts and circumstances in the record, the Panel finds that Complainant has not satisfied its burden of demonstrating that Respondent registered and used the disputed domain names in bad faith seeking to profit from and exploit Complainant’s trademark rights.

In view of the foregoing, the Panel concludes that Complainant has failed to establish the third element of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: October 31, 2022