

## **ADMINISTRATIVE PANEL DECISION**

Mythical Entertainment, LLC v. Ondo I Chi, Total Sources  
Case No. D2023-3702

### **1. The Parties**

Complainant is Mythical Entertainment, LLC, United States of America (“United States”), represented by Nolan Heimann LLP, United States.

Respondent is Ondo I Chi, Total Sources, United States.

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

The disputed domain name <goodmythicalmorningmerch.com> (the “Domain Name”) 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 September 1, 2023. On September 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (GOOD MYTHICAL MORNING MERCH c/o Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on September 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on September 8, 2023.

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 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2023. Respondent did not submit any response but the Center received automatic replies from a third-party email address. Accordingly, the Center notified the Commencement of Panel Appointment Process to the Parties on October 4, 2023.

The Center appointed Harrie R. Samaras as the sole panelist in this matter on October 11, 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 owns trademark registrations for MYTHICAL and GOOD MYTHICAL MORNING: United States Trademark Registration Nos. 7,118,132 (registered July 25, 2023) for MYTHICAL; 6,016,689 (registered March 24, 2020) for MYTHICAL; 4,647,954 (registered December 2, 2014) for GOOD MYTHICAL MORNING; and 4,649,372 (registered December 2, 2014) for GOOD MYTHICAL MORNING, (the MYTHICAL Mark and the GOOD MYTHICAL MORNING Mark are hereinafter collectively, the "Marks").

The Domain Name was registered on October 20, 2022. The website associated with the Domain Name: (1) uses the GOOD MYTHICAL MORNING Mark prominently and repeatedly on each page of the website; (2) describes itself as the "Official Online Shop" of "Good Mythical Morning Merchandise"; (3) sells merchandise that purports to be the same or similar merchandise that Complainant sells on its website (e.g., t-shirts, hoodies, socks, puzzles, blankets) in a similar layout; (4) makes reference to Rhett and Link who founded Complainant and star on the GOOD MYTHICAL MORNING YouTube shows; and (5) uses cartoon drawings and photos of Rhett and Link.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Domain Name is identical to and/or confusingly similar to Complainant's Marks which Complainant has extensively used in commerce since 2012 when it first started its webisodes and opened a website to sell merchandise inspired by the webisodes.

Complainant never granted a license, consented to, or otherwise authorized, Respondent or anyone else associated with Respondent to use the Marks. Respondent cannot assert any pre-existing right or interest in the Marks that existed before Respondent had actual knowledge of Complainant's exclusive rights in those Marks because Complainant has owned the Marks and has used the Marks in commerce since 2012. Many of the goods that Respondent sells on the website associated with the Domain Name are goods branded with the GOOD MYTHICAL MORNING Mark. Thus, it should be presumed that the only reason Respondent selected the Domain Name was because it was substantially similar to Complainant's GOOD MYTHICAL MORNING Mark to cause consumers to believe Respondent is affiliated with Complainant. There is no indication that Respondent is commonly known as the Domain Name. For example, there is no social media associated with the Domain Name.

Respondent registered the Domain Name on October 20, 2022. By that time, Complainant had been using the GOOD MYTHICAL MORNING Mark extensively in commerce for ten years. Any claim by Respondent that it was unaware of Complainant's interest in the Mark is untrue. In fact, nearly every good that Respondent is selling on its website is a GOOD MYTHICAL MORNING branded good. Further, the Domain Name uses Complainant's GOOD MYTHICAL MORNING Mark on each webpage and claims to be the "official" GOOD MYTHICAL MORNING merchandise store. Thus, it should be presumed that the only reason Respondent selected the Domain Name was because it was substantially similar to Complainant's GOOD MYTHICAL MORNING Mark and would cause consumers to believe Respondent is affiliated with Complainant.

Respondent is using the Domain Name to impersonate the GOOD MYTHICAL MORNING Mark or create the consumer impression that it is an authorized retailer of Complainant. It can thus be concluded that Respondent is seeking to capitalize off of the success and reputation of Complainant and to cause

consumers to purchase inferior goods from Respondent's website instead of authentic goods from Complainant's website.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Panel finds that Complainant has rights in the GOOD MYTHICAL MORNING Mark by virtue of its United States trademark registrations cited above.

The Domain Name is confusingly similar to Complainant's GOOD MYTHICAL MORNING Mark because: Complainant's Mark is clearly recognizable within the Domain Name; the Top-Level Domain is generally not determinative in establishing whether the Domain Name is confusingly similar to a complainant's mark; and adding the term "merch" (a shortened form of "merchandise") to the Mark does not prevent a finding of confusing similarity with Complainant's Mark. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8 (the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element).

For the foregoing reasons, the Panel concludes that Complainant has satisfied paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

Complainant asserts that: it never granted a license, consented to, or otherwise authorized Respondent or anyone else associated with the Domain Name to use the GOOD MYTHICAL MORNING Mark; Respondent cannot assert any pre-existing right or interest in that Mark that existed before Respondent had actual knowledge of Complainant's exclusive rights in the GOOD MYTHICAL MORNING Mark; there is no indication that Respondent has been commonly known as the Domain Name; and Respondent selected the Domain Name to cause consumers to believe Respondent is affiliated with Complainant.

Where, as here, Complainant has raised a *prima facie* presumption of Respondent's lack of any rights or legitimate interests in the Domain Name, and Respondent has failed to rebut that presumption, the Panel is satisfied that Complainant has carried its burden of proving that Respondent has no rights or legitimate interests in the Domain Name within the meaning of paragraph 4(a)(ii) of the Policy.

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

At the time Respondent registered the Domain Name on October 20, 2022, Complainant had been using the GOOD MYTHICAL MORNING Mark at least since 2014 - over eight years before Respondent registered the Domain Name. Respondent registered the Domain Name that is confusingly similar to Complainant's registered mark, merely adding the abbreviated term "merch" which is a reference to merchandise which both Complainant and Respondent sell on their respective websites. Moreover, as set forth above, the website associated with the Domain Name: (1) uses the GOOD MYTHICAL MORNING Mark prominently and repeatedly on each page of the website; (2) describes itself as the "Official Online Shop" of "Good Mythical Morning Merchandise"; (3) sells merchandise that purports to be the same or similar merchandise that Complainant sells on its website (*e.g.*, t-shirts, hoodies, socks, puzzles, blankets) in a similar layout; (4) makes reference to Rhett and Link who founded Complainant and star on the GOOD MYTHICAL MORNING YouTube shows; and (5) uses cartoon drawings and photos of Rhett and Link.

Given this undisputed evidence, the Panel finds it is more likely than not Respondent was aware of Complainant and its rights in the GOOD MYTHICAL MORNING Mark when it registered the Domain Name.

With regard to bad faith use, the Panel finds that by using the Domain Name in conjunction with a website as described above to sell GOOD MYTHICAL MORNING branded merchandise, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant's GOOD MYTHICAL MORNING Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

For the foregoing reasons, the Panel finds that paragraph 4(a)(iii) of the Policy has been satisfied.

## **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 Domain <goodmythicalmorningmerch.com> be transferred to Complainant.

*/Harrie R. Samaras/*

**Harrie R. Samaras**

Sole Panelist

Date: October 19, 2023