

ADMINISTRATIVE PANEL DECISION

DrFuhrman Online, Inc. v. Jason Crook
Case No. D2023-4432

1. The Parties

Complainant is DrFuhrman Online, Inc., United States of America, represented by Cozen O'Connor, United States of America (hereinafter "United States").

Respondent is Jason Crook, United States, self-represented.

2. The Domain Name and Registrar

The disputed domain name <eattolive.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 October 25, 2023. On October 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 (Domains By Proxy LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on October 31, 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 November 6, 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 November 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2023. On December 1, 2023, Respondent requested an automatic four calendar days extension. The Center acknowledged receipt of the extension request on December 5, 2023, and extended the Response due date to December 9, 2023. The Response was filed with the Center on December 10, 2023.

The Center appointed Lawrence K. Nodine, Thomas L. Creel and Jeremy Speres as panelists in this matter on February 15, 2024. The Panel finds that it was properly constituted. Each member of 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 is the business unit of Dr. Joel Fuhrman, a medical doctor who has written a series of books using his dietary approaches.

In 1998 Complainant registered the domain name <drfuhrman.com>, which he has used since then as a platform to publish information about his nutrition and lifestyle information and services.

Dr. Fuhrman published a book entitled “Eat to Live” in 2003 followed by several additional books that include “Eat to Live” in the title, including a 2011 update as well as a line of cookbooks and e-books. Complainant asserts that these books have been “best sellers.”

Complainant later started offering various educational services, podcasts, recipes and other content, all relating to health, wellness, nutrition, and a healthy lifestyle under the EAT TO LIVE trademark (hereinafter sometimes the “Mark”).

Complainant also uses the trademark EAT TO LIVE in connection with an educational retreat in San Diego where participants learn tools to lose excess weight and reverse chronic disease.

Complainant owns the United States Trademark Registration No. 6,724,876, registered on May 24, 2022, for the EAT TO LIVE trademark. Complainant also claims common law rights in the Mark.

Respondent lives in rural West Virginia, United States. He is not a domainer but has owned a few domain names in the past for work purposes. He purchased the disputed domain name at the GoDaddy expired domain name auction on March 14, 2023, for USD 1,437. After he purchased the disputed domain name, he also purchased <eattolivedontlivetoeat.com> and <dontlivetoeat.com> on the same day.

Complainant was not the owner of the disputed domain name before its expiration in 2023. Complainant does not allege or offer evidence that it ever owned the disputed domain name, which was first registered in 1998. Respondent submitted a lengthy report¹ reviewing the history of the ownership and use of the disputed domain name. The report indicates that the disputed domain name has been used for a diet offering, gourmet chef offering and a gut health offering over the years by parties² seemingly unrelated to the parties in this case. There is no allegation or evidence regarding whether Complainant ever objected to any prior owner’s claim of ownership or use of the disputed domain name.

¹ Respondent secured the report from a third party—DomainTools accessible at < research.domaintools.com>. The report recites that it “draws on extensive DomainTools dataset and aims to deliver a comprehensive view of the domain’s ownership profile, key historical events and technically linked domain names.”

² Respondent’s DomainTools report indicates that Whois records reflect that a Dr. Michael Roth owned the disputed domain name from 1998 to perhaps as late as 2020 and that for many years (from 2005 to 2013) health and nutrition information was published on the associated website. It is not clear whether anyone other than Dr. Roth operated the associated website during this period. Complainant did not allege any facts or offer any evidence about Dr. Roth’s prior ownership or use of the disputed domain name. Complainant did not assert that it had any relationship with Dr. Roth.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. In doing so it emphasizes the identity of the disputed domain name to Complainant's allegedly well-known mark and its use for pay-per-click ("PPC") advertisements in arguing that the disputed domain name was registered and used in bad faith in order to benefit Respondent through confusion with Complainant's mark.

B. Respondent

Respondent contends that Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name.

Respondent asserts that he "had never heard of Complainant" prior to registering the disputed domain name. Respondent asserts that "[t]he first time I ever heard of complainant's book was at some point on a google search and I seen his book from 2003 and my only thoughts were that maybe that's who let the domain name expire since its 20 years old maybe he didn't need it anymore and didn't think any more about it until I get this complaint."

Respondent purchased the disputed domain name because he believed it was a well-known aphorism that appears prominently in many places. He cites several including in the Bible (Proverbs 13:25³: "The good man eats to live, while the evil man lives to eat."); is attributed to Socrates ("Thou shouldst eat to live; not live to eat."—Socrates⁴), and also used by Molière ("One should eat to live, and not live to eat."-*L'Avare*); and Benjamin Franklin ("Eat to live, and not live to eat."-Poor Richard's Almanack (1734)⁵); and Jack Lalanne (a physical fitness television celebrity)("eat to live, don't live to eat."). Respondent recalls his health-conscious father using the phrase.

Respondent was not aware before reading the Complaint that GoDaddy populated the webpage with PPC links. He did not expressly authorize the links on the webpage and he has not made any money off the links because he has not signed up for the Registrar's "cash parking" service.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

³ <www.biblegateway.com/passages/?search=Proverbs%2013%3A25&version=TLB>, visited February 24, 2024.

⁴ <www.quotes.net/quote/36747>, visited February 24, 2024.

⁵ <lib.uchicago.edu/ead/pdf/century0765.pdf>, visited February 24, 2024.

The Panel finds the first element of the Policy has been established.

B. Registered and Used in Bad Faith

The Panel deems it helpful to address the third element of the Policy before considering the second element, which it addresses below.

The Panel finds that Complainant has not proved by a preponderance of the evidence that Respondent registered the disputed domain name in bad faith. Respondent asserts that he did not buy the disputed domain name to exploit Complainant's trademark rights, but rather because "eat to live" is a well-known proverb. Respondent submits evidence that the disputed domain name is based on a proverb dating back thousands of years. It is a widely recognized admonition that has meaning unrelated to Complainant's trademark. The admonition describes a healthy lifestyle that many encourage and is not uniquely associated with Complainant.

The Panel finds that Respondent's explanation of his reason for purchasing the disputed domain name is plausible. The Panel concludes that Respondent's explanation is at least as likely as Complainant's contention that Respondent purchased it to exploit Complainant's trademark. Consequently, given that it is Complainant's burden to prove that it is more likely that Respondent registered the disputed domain name in bad faith, Respondent must prevail on element three of the Policy.

The Panel acknowledges that Respondent disclosed that "at some point" he conducted a Google search and saw Complainant's 2003 book and wondered whether Complainant was the previous owner of the disputed domain name. Respondent's narrative does not make it clear when he conducted the search, although the context of Respondent's statements regarding his Google search indicate that he conducted the search after he purchased the disputed domain name.

Even if we assume that Respondent conducted the search before he purchased the disputed domain name, this would not require a finding that Respondent thereafter acted in bad faith when he purchased the disputed domain name. The Panel appreciates Respondent's candor in disclosing the fact of his Google search and accordingly accepts his assertion that "my only thoughts were that maybe that's who let the domain expire since its 20 years old maybe he didn't need it anymore and didn't think any more about it." The Panel finds that Respondent's learning of a 20-year-old book title is not alone enough to put him on notice of Complainant's rights, especially when considered together with the other circumstances of this case discussed above and below.

Moreover, further investigation here would not have given Respondent a clear picture of Complainant's rights. Respondent would instead have learned that Complainant never owned the disputed domain name, that it was not Complainant who allowed the disputed domain name to expire, and that the prior owners had made active use of the disputed domain name for several years, including for an offering that was ostensibly competitive with Complainant, underscoring the fact that good faith use of the disputed domain name was possible and that Complainant's mark was not exclusively associated with it. Respondent might also have learned that Complainant used a different domain name – <drfuhrman.com> – to publish information about his diet books and programs. On the facts here, further investigation prompted by the Google search would have painted this confusing picture, which lacks the clarity needed to prove that it was likely that Respondent registered the disputed domain name in bad faith.

Regardless, even if one assumes that Respondent was aware of Complainant's rights, this would not prevent Respondent from exploiting the non-trademark significance of the centuries old proverb that one should "eat to live," and not live to eat. *Compare Julie Wampler v. Name Administration, Inc.*, WIPO Case No. [D2014-1586](#) ("The disputed domain name [<tablefortwo.com>] appears to reflect a relatively common and descriptive phrase [. . .]. The trade mark TABLE FOR TWO does not appear to be associated exclusively with any single party.").

As evidence of his good faith, Respondent referred to two other domain names he registered on the same day that he acquired the disputed domain name at auction. These are <dontlivetoeat.com> and <eattolivedontlivetoeat.com>. Whois records indicate that they were indeed registered on March 14, 2023 – the same date that Respondent acquired the disputed domain name at auction. Respondent’s additional domain names represent persuasive, contemporaneous evidence that Respondent had the historical phrase, as opposed to Complainant, in mind when he acquired the disputed domain name on the same day.

Complainant contends that Respondent sought to capitalize on Complainant’s reputation in order to drive traffic to his PPC site, thus benefiting Respondent financially. But there is no evidence that this was Respondent’s intent when he registered the disputed domain name. The PPC advertisements were put up automatically as part of the Registrar’s default landing page for newly registered domain names. Respondent neither initiated these PPC advertisements nor benefited from them financially. Importantly, as of the filing of its Response in these proceedings, Respondent had not adopted the Registrar’s paid “Cash Parking” service, which allows registrants to benefit financially from PPC advertisements. The disputed domain name’s nameservers were still set to the default “domaincontrol.com” nameservers, rather than the “cashparking.com” nameservers used for the Registrar’s Cash Parking service. See *Wickes Building Supplies Limited v. Timothy Huskey*, WIPO Case No. [D2023-3054](#) (where name servers set to “default” and not the “Cash Parking” name servers, Respondent did not likely benefit financially).

Regardless, Respondent is entitled to register the disputed domain name for commercial gain based on the value of the phrase as a common proverbial admonition. It is not bad faith to seek commercial gain for reasons based on the inherent non-trademark value of the phrase, provided this is not a pretext for exploiting the trademark value of the term. Complainant has not proved that it is probable that Respondent’s invocation of the proverbial value of the “eat to live” is a pretext for exploitation of Complainant’s Mark.

The Panel finds the third element of the Policy has not been established.

C. Rights or Legitimate Interests

Because the Panel finds that Complainant has not proved that Respondent registered the disputed domain name in bad faith, there is no need to address this element. The Panel, however, notes the following for the sake of certainty.

For similar reasons, the Panel finds that Respondent’s use of the disputed domain name is bona fide. “Over the course of many UDRP cases, panels have acknowledged further grounds which, while not codified in the UDRP as such, would establish respondent rights or legitimate interests in a domain name. For example, generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be bona fide and is not per se illegitimate under the UDRP.” [WIPO Overview 3.0](#) section 2.1.

The Panel finds that Respondent’s explanation and evidence indicate a “credible and legitimate intent not to capitalize on Complainant’s Mark”, and accordingly find that Complainant has not satisfied the second element of the Policy. [WIPO Overview 3.0](#) section 2.10.2

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the Complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

Complainant’s Mark was registered before the disputed domain name, and adopted in commerce for 20 years prior. Complainant’s Mark also seems to have enjoyed some recognition, at least within its industry, for some time prior to registration of the disputed domain name. The disputed domain name has been used

for PPC advertisements relating to health and nutrition websites. Thus, it is not implausible that Complainant formed a sincere view (albeit a misinformed one) that the disputed domain name constituted cybersquatting, and it cannot be said that it is more likely than not that Complainant acted in bad faith in bringing the Complaint for some ulterior purpose rather than genuinely believing the disputed domain name to constitute cybersquatting.

The Panel denies the request for a finding of reverse domain name hijacking.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Lawrence K. Nodine/

Lawrence K. Nodine

Presiding Panelist

/Thomas L. Creel/

Thomas L. Creel

Panelist

/Jeremy Speres/

Jeremy Speres

Panelist

Date: February 29, 2023