

ADMINISTRATIVE PANEL DECISION

Chad M Koehn v. Host Master, 1337 Services LLC
Case No. D2024-0881

1. The Parties

The Complainant is Chad M Koehn, United States of America (“United States”), is represented by Robyn L Peters, United States.

The Respondent is Host Master, 1337 Services LLC, Saint Kitts and Nevis.

2. The Domain Name and Registrar

The disputed domain name <chadkoehn.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 28, 2024. On February 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 1, 2024, 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 (TuCows Domains Inc) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 5, 2024 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 amendment to the Complaint on March 5, 2024.

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 the Respondent of the Complaint, and the proceeding commenced on March 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 2, 2024.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on April 9, 2024. 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.

On April 24, 2024, the Panel issued a Procedural Order No. 1 requesting the Complainant to submit by April 30, 2024 evidence in respect of (1) his relevant registered trade marks; and (2) his substantial and consistent use in commerce of the CHAD KOEHN mark, by April 30, 2024; and permitting the Respondent to submit any comments in response by May 7, 2024.

On April 30, 2024, the Complainant submitted a declaration in compliance with the Procedural Order No.1 together with an imbedded link to documents referred to in the declaration.

The Respondent did not submit any comments in response to the Complainant's submission.

On May 14, 2024, the Center requested the Complainant to resubmit in pdf format copies of the documents which were unable to be accessed via the imbedded link contained in the Complainant's April 30, 2024 submissions.

On May 15, 2024, the Complainant resubmitted the requested documents.

4. Factual Background

A. Complainant

The Complainant is a financial and investment adviser and the CEO, President and primary shareholder of United Capital Management of Kansas, Inc. ("UCM"), a company founded by the Complainant in 2005. Prior to the founding of UCM, the Complainant worked as a financial and investment adviser under his own name for 12 years.

B. Respondent

The identity of the Respondent is unknown, and the only information available corresponds to the Registrar disclosing the registrant as Host Master, 1337 Services LLC, Saint Kitts and Nevis.

C. The Disputed Domain Name

The disputed domain name was registered on April 5, 2023.

D. Use of the Disputed Domain Name

The disputed domain was previously resolved to an English language website with the title "Chad Koehn Investment Fraud Offender", featuring a prominent altered cartoon version of the Complainant's image, containing defamatory content accusing the Complainant of fraud and criminal conduct, and inviting Internet users to post "reviews" (the "Website").

As at the date of this Decision, the disputed domain name is no longer resolved to any active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that he has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the Respondent has registered and used the disputed domain name in bad faith, in respect of the Website, containing misleading, defamatory and derogatory content designed to tarnish the Complainant's image and disrupt his professional activities.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

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 the Complainant's trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant initially submitted, in the Complaint, as follows:

"The complainant has established rights in the "Chad Koehn" mark through either registered trademarks or substantial and consistent use in commerce that has led to acquired distinctiveness. These rights may pertain to a range of goods or services under which the "Chad Koehn" mark is recognized by consumers as a source identifier."

In response to the Procedural Order, the Complainant did not put forward evidence of any trade mark registrations, but instead relied upon the Complainant's "continuous use of his name in conducting business over the past thirty years... in the financial advisory sector."

The Panel finds that the evidence submitted by the Complainant in response to the Procedural Order demonstrates that the Complainant has used his name as a trade mark-like identifier in trade or commerce. Accordingly, the Panel finds that the Complainant has established unregistered or common law rights in his name for purposes of standing to file a UDRP, in light of the use of his name in commerce as a distinctive identifier of the Complainant's financial and investment related services. [WIPO Overview 3.0](#), section 1.5.2.

The Panel finds the Complainant has established unregistered trade mark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

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

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

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes the Complainant's claim that the Respondent's use of the disputed domain name to post allegedly defamatory content on the Website amounts to tarnishment and cannot give rise to rights or legitimate interests for the purposes of the Policy. The Panel notes that tarnishment under the Policy is rare and has been typically applied regarding an unseemly conduct as linking unrelated pornographic, violent, or drug-related images or information to an otherwise wholesome mark. While the accusations of a criminal or fraudulent activity on the website at the disputed domain name may be seen by the Complainant as "tarnishing" the Complainant's mark, criticism is not tarnishment, and the Panel moreover notes that the Respondent has not come forward with any evidence as to the veracity of such criticism. [WIPO Overview 3.0](#), section 2.6.

Above all, the Panel notes that the disputed domain name consists in its entirety of the Complainant's name and mark, without any added term signaling criticism. In this regard, the Panel notes 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." [WIPO Overview 3.0](#), section 2.6.2.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name in order to post defamatory content on the Website and/or mislead visitors constitutes bad faith under the Policy. [WIPO Overview 3.0](#), section 3.12.

The Panel finds that the Complainant has established the third element of 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, <chadkoehn.com>, be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: May 24, 2024