

ADMINISTRATIVE PANEL DECISION

onezeroonezeroone d.o.o. v. Gleb Martynov
Case No. D2024-1039

1. The Parties

The Complainant is onezeroonezeroone d.o.o., Croatia, represented by B&B Services, LLC, Latvia.

The Respondent is Gleb Martynov, Georgia.

2. The Domain Name and Registrar

The disputed domain name <100101.art> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 6, 2024. On March 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 11, 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 (PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 12, 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 amended Complaint on March 17, 2024.

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 proceedings commenced on March 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 15, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on April 19, 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.

4. Factual Background

The Complainant maintains a website at “www.10101.art” which constitutes an online marketplace in relation to works of art, and which offers collective ownership of artwork via downloadable digital files authenticated by non-fungible tokens (“NFTs”).

The Complainant is the owner of European Union trademark 10101 (word mark) with registration number 018821501, filed on January 9, 2023, and registered on May 11, 2023, for goods and services in classes 9, 35, 36, and 41. The Complainant also owns European Union trademark 1011 (figurative mark) with registration number 018821522, filed on January 9, 2023, and registered on May 11, 2023, for goods and services in classes 9, 35, 36, and 41. The latter represents a version of the number “1011” in black on a white background in an angular, stylized typeface, with the leading and trailing digits of approximately the same size, the number “0” as the largest digit, and the immediately following “1” as the smallest digit.

According to the corresponding Whois record, the disputed domain name was registered on February 8, 2024. Little is known of the Respondent, which has not participated in the administrative proceeding, other than that it appears to be a private individual with an address in Batumi, Georgia. As put forward by the Complainant and undisputed by the Respondent, the website associated with the disputed domain name appears to be a static but otherwise cloned version of the Complainant’s website at “www.10101.art”, incorporating the Complainant’s trademarks.

5. Parties’ Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain name consists of the same digits as the Complainant’s trademark, with the only difference being the presence of additional digit “0” placed in the middle of the disputed domain name, and that this amounts to incorporation of the Complainant’s mark in its entirety, with the difference being insufficient to preclude a finding of confusing similarity. The Complainant adds that it has no information indicating that the Respondent could have a legitimate interest in the disputed domain name that could fall within paragraph 4(c) of the Policy, adding that the associated website literally copies the design of the Complainant’s website, and reproduces the Complainant’s trademarks.

The Complainant contends that there is a risk of implied affiliation with the Complainant, its trademarks and original website, as the disputed domain name effectively impersonates or suggests sponsorship or endorsement by the Complainant, and submits that it cannot qualify as a bona fide fair use, adding that use of a domain name for illegal activity, including impersonation and passing off, can never confer rights and legitimate interests upon a respondent. The Complainant states that it has neither licensed or permitted the Respondent to use its trademarks to apply for a corresponding domain name, nor has permitted the Respondent to use the content and design of the Complainant’s website.

The Complainant notes that the disputed domain name was registered after registration of the Complainant’s trademark, and reproduces the same with the addition of a digit, while the associated website copies the design and content of that of the Complainant. The Complainant submits that the Respondent was aware of

the Complainant's marks and earlier domain name when it registered the disputed domain name, and has done so to mislead Internet users for commercial gain by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship or endorsement of the Respondent's website.

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 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.

The 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 Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The disputed domain name consists of a common, obvious, or intentional misspelling of the Complainant's mark, here in the form of an inserted additional digit "0". Such a misspelling is typically considered by panels under the Policy to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. [WIPO Overview 3.0](#), section 1.9.

The Panel also takes note of the content of the website associated with the disputed domain name, which according to the Complainant's screenshot consists of a cloned version of the Complainant's website. This content confirms confusing similarity whereby it appears prima facie that the respondent seeks to target the Complainant's trademark through the disputed domain name. [WIPO Overview 3.0](#), section 1.15.

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.

Panels have held that the use of a domain name for illegal activity, here, impersonation/passing off by way of a clone of the homepage of the Complainant's website can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel finds that the Respondent's deliberate employment of a misspelling of the Complainant's trademark in the disputed domain name, of a kind which could easily be input accidentally by an Internet user inadvertently typing an additional "0" (including by way of a keyboard's auto-repeat function), signals an intention on the part of the Respondent (corroborated by the associated infringing/cloned website content) to confuse Internet users seeking or expecting the Complainant's website, for commercial gain. [WIPO Overview 3.0](#), section 1.9. This is further supported by the fact that the disputed domain name is also identical to the Complainant's domain name <10101.art>, only inserting the additional digit "0". The Panel is satisfied that the Respondent's conduct constitutes registration and use in bad faith in terms of the Policy, paragraph 4(b)(iv), in that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website.

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 <100101.art> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: May 3, 2024