

ADMINISTRATIVE PANEL DECISION

Guitar Center, Inc. v. Stephen Weeks

Case No. D2022-0086

1. The Parties

Complainant is Guitar Center, Inc., United States of America, represented by Much Shelist PC, United States of America (“United States”).

Respondent is Stephen Weeks, United States of America.

2. The Domain Name and Registrar

The disputed domain name <savannahguitarcenter.com> (the “Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2022. On January 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 14, 2022, 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, and contact information in the Complaint. The Center sent an email to Complainant on January 17, 2022, 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 January 22, 2022.

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 January 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 14, 2022.

On February 16, 2022, due to an apparent issue with the notification, the Center granted Respondent a five-day period (through February 21, 2022) in which to indicate whether it wishes to participate to this proceeding. Respondent did not submit any Response.

The Center appointed Badgley, Robert A. as the sole panelist in this matter on February 22, 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 has been a retailer of guitars and other musical instruments and accessories for several decades. According to Complainant, it is the “largest music retailer chain in the United States”, with 302 brick-and-mortar retail stores. Complainant also operates a commercial website at “www.guitarcenter.com”.

Complainant holds a number of registered trademarks in various jurisdictions, including United States Patent and Trademark Office (“USPTO”) Reg. No. 1,290,481 for the stylized trademark GUITAR CENTER, with a first use in commerce of June 1, 1965.

In addition, Complainant has a robust social media presence on Facebook, Twitter, YouTube, and so forth. The Panel concludes that the GUITAR CENTER trademark is widely known in the United States.

The Domain Name was registered on August 11, 2021. The Domain Name resolves to the commercial website of Portman’s Music Superstore (“Portman’s”), a retailer of musical instruments with several stores in the State of Georgia, in the United States, at which site musical instruments are offered for sale.

Respondent is a web designer, one of whose clients is Portman’s. This is confirmed from a view of Respondent’s firm’s website.

On September 22, 2021, Complainant’s counsel sent Portman’s a cease-and-desist letter, to which Complainant received no reply.

On January 17, 2022, after Complainant had initiated this proceeding and had learned of Respondent’s identity, Complainant’s counsel sent an email to Respondent and his web design firm. Respondent did not reply to this email.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark GUITAR CENTER, through registration and use demonstrated in the record. The Panel finds the Domain Name to be confusingly similar to the GUITAR CENTER mark. The mark is entirely reproduced in the Domain Name, and the additional geographical term "Savannah" does not prevent a finding of confusing similarity between the mark and the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not come forward, either in response to Complainant's January 17, 2022 email or in response to the Complaint in this proceeding, to articulate or prove some *bona fide* reason for registering the Domain Name. Based on the record here, it appears that Respondent, as part of his marketing and web design services for his client Portman's, registered the Domain Name to increase Internet traffic to the Portman website by creating a false association between the well-known Complainant and his client, who is a competitor (in Georgia, at least) of Complainant's. Even when done on behalf of a client rather than done in one's own right, this infringing conduct cannot be legitimate under the Policy.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

- (iv) that by using the 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.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. It is more likely than not, from this undisputed record, that Respondent had Complainant's well-known and longstanding GUITAR CENTER mark in mind when registering the Domain Name.

With respect to bad faith use, Respondent's conduct constitutes bad faith under the above-quoted Policy paragraph 4(b)(iv). The increased Internet traffic to the website of Respondent's client certainly cannot harm Respondent financially. On the contrary, it would seem rather obvious that Respondent stood to gain reputationally (and ultimately financially) to the extent his web design and marketing services were associated with successful websites.

Complainant has established Policy paragraph 4(a)(iii).

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 Name <savannahguitarcenter.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: March 3, 2022