

## **ADMINISTRATIVE PANEL DECISION**

Everytown for Gun Safety Action Fund, Inc. v. Contact Privacy Inc.  
Customer 1249561463 / Steve Coffman  
Case No. D2022-0473

### **1. The Parties**

Complainant is Everytown for Gun Safety Action Fund, Inc., United States of America (“United States”), represented by Venable, LLP, United States.

Respondent is Contact Privacy Inc. Customer 1249561463, Canada / Steve Coffman, United States.

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

The disputed domain name <momsdemand.org> is registered with Google LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2022. On February 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 10, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on February 15, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. The Center received three email communications from Respondent on February 15 and 16, 2022. Complainant filed an amended Complaint on February 20, 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 February 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 14, 2022. Respondent did not submit any response. Accordingly, the Center notified the commencement of Panel appointment process on March 15, 2022.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on March 21, 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.

The Center received an email communication from Respondent on March 21, 2022. On March 22, 2022, Respondent sent an informal response in an email to the Center.

#### **4. Factual Background**

Complainant, Everytown for Gun Safety Action Fund, Inc., is a United States based gun violence prevention organization. Complainant owns and uses the mark MOMS DEMAND ACTION in connection with its advocacy efforts and owns two trademark registrations for the MOMS DEMAND ACTION mark in the United States (Registration Nos. 4,569,205 and 5,092,084, which issued to registration on July 15, 2014 and November 29, 2016 respectively). Complainant also owns a trademark registration for a stylized logo for MOMS DEMAND ACTION FOR GUN SENSE IN AMERICA (Registration No. 5,151,549, which issued to registration on February 28, 2017). Lastly, Complainant owns and uses the domain names <momsdemandaction.org> and <momsdemandaction.com> for a website that provides information regarding Complainant and its advocacy efforts.

Respondent, who is based in the United States, registered the disputed domain name on February 26, 2021. At some point thereafter, Respondent redirected the disputed domain name to a web page within a website at “www.defcad.com” which has offered a 3D printable “MOMS DEMAND ACTION - FIREBOLT 5.56 CATCH MAGWELL.” The website at “www.defcad.com” appears to be a repository for small arms technical data that users subscribe to and presumably pay fees to download materials for 3D printable firearms and parts.

#### **5. Parties’ Contentions**

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

Complainant maintains that it is the largest gun violence prevention organization in the United States and that its MOMS DEMAND ACTION mark and related advocacy efforts are well-known.

Complainant argues that the disputed domain name is confusing similar to Complainant’s MOMS DEMAND ACTION mark as it clearly consists of the dominant portion of Complainant’s mark and only differs through the exclusion of the word “action.”

Complainant asserts that Respondent has no rights or legitimate interests in the disputed domain name as Respondent (i) has received no permission from Complainant to use the MOMS DEMAND ACTION mark, (ii) has no interest in the MOMS DEMAND ACTION mark, (iii) is not commonly known by the disputed domain name, and (iv) has not used the disputed domain name for a noncommercial fair use purpose, but to misleadingly attract web users to a website that offers “3D printed firearm parts and accessories that Complainant advocates should be illegal.”

Lastly, Complainant contends that Respondent has registered and used the disputed domain name in bad faith to misleadingly attract web users to a website that promotes a 3D printable firearm part using the name and mark MOMS DEMAND ACTION and to disrupt Complainant’s business.

##### **B. Respondent**

Respondent did not reply to Complainant’s contentions. Respondent did send the Center three emails in which Respondent questioned the matter and requested further copies of the Complaint and exhibits. Respondent sent the Center an informal “response” on March 22, 2022 in which he asserts that he

registered and used to disputed domain name as an exercise of free speech and for “parodying the organization.”

## **6. Preliminary Issue Regarding Respondent’s Late Informal Response**

Although Respondent was aware of the proceeding as early as February 15, 2022, Respondent did not file a response by the March 14, 2022 deadline or make a request for an extension of time to do so. On March 22, 2022, Respondent, who claims not to have been able to find an attorney, sent a short email to the Center with Respondent’s contentions. Consequently, the question before the Panel is whether such informal Response should be considered by the Panel.

Under the Rules, the admissibility of evidence (such as whether a late-filed response will be considered), is solely within the discretion of the Panel. Paragraph 10 of the Rules makes clear that a panel has the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition. Paragraph 14(a) of the Rules provides, however, that “[i]n the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules [...], the Panel shall proceed to a decision on the complaint.” Thus the question for the Panel is whether there are exceptional circumstances here that would warrant accepting Respondent’s late informal Response.

Here, Respondent has not shown that any *bona fide* exceptional circumstances exist why Respondent could not submit its Response by the deadline particularly as Respondent had a month to do so and was provided repeated notice from the Center and information about the proceeding. That failure to show good cause with any credible evidence suggests that Respondent’s claimed reasons appear to be pretextual. Notably, many panels have disregarded late-filed responses where “good cause” is not shown noting that “it is important to apply the Rules as written, absent a good reason, or parties will feel free to disregard deadlines”. See *Museum of Science v. Jason Dare*, Case No. [D2004-0614](#). While the Panel agrees with this logic and is inclined not to consider Respondent’s informal response, the Panel recognizes that Respondent is representing himself and will thus nevertheless consider Respondent’s primary assertion in its informal response that he registered and used the disputed domain name for claimed protected speech and political commentary and for claimed purposes of “parodying the organization.”

## **7. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

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

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. Section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). Complainant has provided evidence that it owns a trademark registration for the MOMS DEMAND ACTION mark and that such issued to registration years before Respondent registered the disputed domain name.

With Complainant’s rights the MOMS DEMAND ACTION mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the generic Top-Level

Domain (“gTLD”) such as “.org”) is identical or confusingly similar to Complainant’s mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold for satisfying this first element is low and generally panels have found that fully incorporating the identical mark in a disputed domain name is sufficient to meet this standing requirement.

In the instant proceeding, the disputed domain name is confusingly similar to Complainant’s MOMS DEMAND ACTION mark as it fully and clearly includes the dominant connotative aspect of Complainant’s mark, namely “moms demand”. The exclusion of the word “action” does not eliminate the confusing similarity given that the “moms demand” portion of Complainant’s mark is clearly identifiable in the disputed domain name. The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant’s MOMS DEMAND ACTION mark and in showing that the disputed domain name is confusingly similar to that trademark.

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

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Looking at the disputed domain name itself, it consists of the common words “moms” and “demand” and in combination could be used in a descriptive sense to mean “mothers who request or ask for something”. Here, though, it is clear that Respondent did not register the disputed domain name to use it in any descriptive sense but in its trademark sense to specifically refer to Complainant. Indeed, Respondent has in fact admitted this by claiming that he registered and used the disputed domain name for purposes of allegedly “parodying the organization.”

With respect to Respondent’s use of the disputed domain name, Respondent has used it as a redirect to a web page that offers a 3D printable firearm part. That web page sits within a website that is dedicated to promoting and offering downloads of numerous 3D printable firearms and parts, and which holds itself out to be “The World’s Largest 3D Gun Repository”. Moreover, the web page to which the disputed domain name resolves features an image of a 3D printed gun with an exact copy of Complainant’s stylized logo for the MOMS DEMAND ACTION FOR GUN SENSE IN AMERICA mark emblazoned on it in a stamped form. The possible intent of the web page, as Complainant contends, is to suggest that the 3D printable firearm part being promoted, namely, a “Firebolt 5.56 Bolt Catch Magwell,” is somehow connected to Complainant’s MOMS DEMAND ACTION mark.

Given that Complainant’s MOMS DEMAND ACTION advocacy efforts are focused on gun violence prevention and promoting safety measures and responsible gun ownership, the use of the disputed domain name as a redirect to a web page promoting a 3D printable firearm part featuring the MOMS DEMAND ACTION mark raises a question as to whether Respondent’s actions are legitimate as an expression of free speech.

Paragraph 4(c)(iii) of the Policy provides that a respondent may have a right or legitimate interest in a disputed domain name if the respondent is “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.” Here, the first question is whether Respondent may have intended to make some legitimate commentary on or criticism of Complainant’s MOMS DEMAND ACTION gun violence prevention advocacy by using the disputed domain name for a web page that juxtaposes a 3D printed gun with Complainant’s logo. As discussed below, the Panel does not believe this to be the case.

The Panel notes that a number of panelists have held, in what could be seen as a consensus view, that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark. However, an exception has been expressed by a few panels in instances, such as here, where the parties are based in the United States. Such panels applying United States First Amendment principles have historically found that even a domain name identical to a trademark used for a *bona fide* noncommercial criticism site may support a legitimate interest. See section 2.6.2 of WIPO Jurisprudential [Overview 3.0](#). Subsequent cases addressing the issue have applied an “impersonation test,” under which the analysis would mainly turn on whether the public would perceive the disputed domain name as being affiliated with or authorized by a complainant (see *Dover Downs Gaming & Entertainment, Inc. v. Domains By Proxy, LLC / Harold Carter Jr, Purlin Pal LLC*, WIPO Case No. [D2019-0633](#) (“*Dover Downs*”).

While the Panel supports an approach as expressed through an “impersonation test” as set forth in *Dover Downs*, the Panel nevertheless has reservations about adopting a blanket use of an “impersonation test.” Such an approach if applied too broadly or without looking at other case factors, could in the Panel’s view, create an undue burden on respondents in cases involving parties based only in the United States where a domain name identical to a trademark is being used for a *bona fide* noncommercial criticism site that would be protected under the First Amendment as applied by some United States federal court decisions. See, e.g., *Bosley Medical Institute, Inc. v. Kremer*, 403 F.3d 672 (9th Cir. 2005).

To the Panel, the use of an “impersonation test” is an important factor to be considered in cases of claimed free expression involving a domain name that is identical or nearly identical to another’s trademark along with other factors that panels have focused on, such as (i) the genuineness and nature of the criticism or commentary, (ii) the possible pretextual nature of the respondent’s website, (iii) the commercial or noncommercial aspects of the respondent’s website, (iv) the nature of the domain name itself potentially including any additional terms or plays on words, (v) the use of disclaimers, and (vi) other factors that could inform whether a respondent is using the disputed domain for *bona fide* noncommercial criticism concerning a complainant or to take advantage of a complainant’s mark in a bad faith or abusive way for the benefit of a respondent. The Panel believes the approach should be more holistic and focus on the totality of factors and should not necessarily be determined, at least for parties legitimately based in the United States, on one factor alone (albeit one that perhaps sets the scene for the consideration of others).<sup>1</sup>

With the foregoing in mind, the Panel has considered Respondent’s defense of free expression and found it wanting. Here, the web page to which the disputed domain name redirects does not contain any criticism or commentary regarding Complainant or its MOMS DEMAND ACTION advocacy. The web page looks similar to the many other pages offering 3D printable firearms or parts within the “www.defcad.com” website. The individual pages within the “www.defcad.com” website, which the Panel has reviewed, typically show an image of the 3D printable firearm or part with its name and description.

As presented, Respondent’s web page is confusing on its face. The web page features an image of a 3D printed gun with a stamp of Complainant’s MOMS DEMAND ACTION FOR GUN SENSE IN AMERICA stylized logo along with accompanying web page text that simply reads “MOMS DEMAND ACTION -

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<sup>1</sup> Indeed, a multi-factored approach seems implicitly consistent with part of the underlying rationale expressed in *Dover Downs*, *supra*. As the *Dover Downs* panel appropriately noted in its summary of United States federal cases involving free speech issues and identical or nearly identical domain names, “a court in the United States considering whether a finding of initial interest confusion constitutes a violation of the Lanham Act would need to weigh a number of fact-dependent considerations.” The panel cited to several United States federal court decisions that applied such a multi-factored approach in cases that either found an identical domain name or metatag use to run afoul of or to be in line with First Amendment protections (see, e.g., *Brookfield Commc’ns, Inc. v. West Coast Entm’t Corp.*, 174 F.3d 1036 (9th Cir. 1999) and *Planned Parenthood Fed’n of Am., Inc. v. Bucci*, 42 U.S.P.Q.2d 1430 (S.D.N.Y. Mar. 19, 1997), *aff’d*, 152 F.3d 920 (2nd Cir. 1998); *but see TMI Inc. v. Maxwell*, 383 F.3d 433 (5th Cir. 2004) and *Northland Insurance Cos. v. Blaylock*, 115 F. Supp.2d 1108, (D. Minn. 2000). See also *Bosley Medical Institute, Inc. v. Kremer*, 403 F.3d 672 (9th Cir. 2005) (not cited in *Dover Downs*) and *People for the Ethical Treatment of Animals, Inc. v. Doughney*, 263 F.3d 359 (4th Cir. 2001) (not cited in *Dover Downs*). Separately, the Panel also notes that the case of *Lamparello v. Falwell*, 420 F.3d 309 (4th Cir. 2005) (not cited in *Dover Downs*) and others cases cited in *Dover Downs* which do not contain identical matches of domain names to trademarks are likewise informative on the matter.

FIREBOLT 5.56 BOLT CATCH MAGWELL Mod of The Firebolt 3D Printable AR-15/9/45 Lower Receiver System.” As the web page is devoid of any criticism or commentary concerning Complainant, let alone anything, such as a disclaimer, advising that the web page has no connection to Complainant, a web user brought to the web page through the disputed domain name which is based on Complainant’s MOMS DEMAND ACTION mark could conceivably believe (even if mistakenly) that the particular 3D printed firearm part being promoted with Complainant’s stamped logo is approved of by Complainant. Indeed, given that Complainant encourages a culture of responsible gun ownership, the 3D printed part could be seen, for example, as an approved safety measure (e.g., one that makes it more difficult to use an AR-15 rifle, such as preventing its conversion into a fully automatic weapon).

To be sure, the disputed domain name itself does not contain anything that would communicate that its purpose is to criticize or comment on Complainant or its MOMS DEMAND ACTION advocacy efforts. If anything, the disputed domain name standing alone with a “.org” TLD extension suggests that the disputed domain name is connected to Complainant’s MOMS DEMAND ACTION gun violence prevention efforts. Given the lack of any criticism or commentary in the disputed domain name and associated web page, which also includes information for subscribing to a “Defcad Newsletter,” links within the “www.defcad.com” website about Defcad and ultimately downloads of 3D printable firearms and parts (presumably for a fee), it seems more likely than not that Respondent’s intent has been to use the disputed domain name as a way to draw consumers to the “www.defcad.com” website for Respondent’s benefit. Such use is not legitimate.

With regard to Respondent’s claim that he intended to engage in some form of parody, such is not evident from the disputed domain name or the content of the web page that the disputed domain name resolves to. There is nothing in the disputed domain name that would alert a web user that the disputed domain name is part of a parody and that the associated web page is not affiliated with or approved by Complainant. See *Harry Winston Inc. and Harry Winston S.A. v. Jennifer Katherman*, WIPO Case No. [D2008-1267](#) (finding that the domain name <hairywinston.com> using “hairy” instead of “harry” for a dog product boutique was part of a parody of the famous HARRY WINSTON mark for jewelry). Indeed, the content of the web page at the disputed domain name, as already noted, is confusing and does not on its face suggest that the web page is a parody, or is unconnected with Complainant, as opposed to simply being seen as a genuine offer for a 3D printable firearm part on a website whose entire purpose is to offer downloads of 3D printable firearms and parts to individuals who have accounts with the “Defcad” organization.

If anything, the evidence shows that Respondent’s real purpose behind the disputed domain name has been to mislead and attract web users to the “www.defcad.com” website for the benefit of Respondent and not for some fair use purpose such as a *bona fide* parody. Simply put, whatever parody Respondent might claim exists remains a mystery and does not justify essentially impersonating Complainant to attract web users to Respondent’s web page. See, e.g., *Bayer AG v. FlokiNET Ltd WhoisProtection, FlokiNET Ltd*, WIPO Case No. [D2020-2907](#); *The Tolkien Estate Limited v. Domain Investments / Matthew Jensen*, WIPO Case No. [D2021-2571](#).

Given that Complainant has established with sufficient evidence that it owns rights in the MOMS DEMAND ACTION mark, and given Respondent’s above noted actions, the Panel concludes that Respondent does not have a right or legitimate interest in the disputed domain name and that none of the circumstances of paragraph 4(c) of the Policy are evident in this case.

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

For similar reasons noted above, Complainant has established that Respondent registered and used the disputed domain name in bad faith. Respondent clearly knew of Complainant and its mark, and the registration and use of the disputed domain name were undertaken intentionally to either disrupt Complainant’s activities, tarnish Complainant’s reputation or to mislead and attract web users to the <defcad.com> website, a website that offers numerous 3D printable firearms and parts for a fee, for Respondent’s benefit, whether monetary or otherwise. See generally [WIPO Overview 3.0](#) at section 2.5.3.

Accordingly, the Panel finds that Complainant succeeds under this element of the Policy.

## 8. 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 <momsdemand.org> be transferred to Complainant.

*/Georges Nahitchevansky/*

**Georges Nahitchevansky**

Sole Panelist

Date: April 4, 2022