

ADMINISTRATIVE PANEL DECISION

The Goodwood Estate Company Limited v. Privacy service provided by Withheld for Privacy ehf / Paul Olsen
Case No. D2022-2975

1. The Parties

The Complainant is The Goodwood Estate Company Limited, United Kingdom, represented by Bird & Bird LLP, United Kingdom.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Paul Olsen, United States of America.

2. The Domain Names and Registrar

The disputed domain names <goodwoodgirls.com> (First disputed domain name), and <thegoodwoodrevival.com> (Second disputed domain name) are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 11, 2022. On August 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 12, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 18, 2022 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 August 23, 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 the Respondent of the Complaint, and the proceedings commenced on August 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2022. The Respondent submitted emails to the Center on August 18 (twice), 19, 25, and on September 3, 4, and 5, 2022. Accordingly, the Center sent

Commencement of Panel Appointment Process on September 20, 2022. After that notification, the Respondent submitted further emails on September 20 and 21, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on September 30, 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

The Goodwood Estate is a property in England, the United Kingdom which has been the seat of the Dukes of Richmond for over 300 years.

In more modern times, it has also become the venue for a number of major motor sport and horseracing events including the Festival of Speed, the Goodwood Revival, and the Qatar Goodwood Festival. Amongst other things, the estate includes a hotel, a golf course, and numerous restaurants and provides hospitality and catering services.

The Complainant is the operator of this enterprise.

The Complaint includes evidence that the Complainant is the owner of a number of registered trademarks in the United Kingdom (they are said to be examples only):

- (a) UK00901529007, GOODWOOD, which was entered in the register on June 13, 2005 and is registered with effect from February 25, 2000 in respect of a wide range of goods and services in International Classes 3, 4, 6, 8, 9, 12, 13, 14, 16, 18, 19, 20, 21, 24, 25, 26, 28, 35, 36, 37, 39, 41, and 42;
- (b) UK00913263348, GOODWOOD REVIVAL, which was entered in the register on January 6, 2015 and is registered with effect from September 17, 2014 in respect of a wide range of goods and services in International Classes 6, 9, 14, 16, 18, 21, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, and 43; and
- (c) UK00917868561, GOODWOOD REVIVAL MEETING and device, which was entered in the register on October 3, 2018 and is registered with effect from March 5, 2018 in respect of a wide range of goods and services in International Classes 9, 12, 25, and 41.

Amongst other things, the Complainant has been promoting its events and services from the website to which the domain name <goodwood.com> resolves since 1997. It has also held the domain name <goodwoodrevival.com> since 2004. This domain name redirects to a page on the main website specifically promoting the historic motor race meeting known as the Goodwood Revival from “www.goodwood.com/motorsport/goodwood-revival”.

The Complainant asserts that the Estate and its events are famous throughout the United Kingdom and internationally and that it has made significant investments in the promotion and use of its trademarks over the last three decades. This does not appear to be controversial between the parties. For example, the Respondent’s website at the Second disputed domain name states “The Goodwood Revival is simply the world’s most spectacular, evocative, time-shifting yearly event that will leave you breathless”. The materials submitted by the Complainant and the Respondent go a long way to supporting that claim, showing very substantial events including the participation of numerous racing teams and various vintage and modern aircraft, with very substantial crowds.

The Respondent is an artist of apparently eclectic talents: see “www.olsenart.com”.

He has attended at least one Goodwood Revival event. The Respondent says he did so as an approved photographer. In any event, the Respondent took numerous photographs of the event.

Subsequently, the Respondent registered the Second disputed domain name in (at least) 2010 and the First disputed domain name in (at least) 2011.¹ He published a large number of his photographs on the websites to which these disputed domain names resolved.

The website to which the Second disputed domain name resolved included an image of the Complainant's registered trademark UK00917868561 under the words "Welcome to the fabulous", some (limited) descriptive text and numerous photographs of exhibitors, performers, attendees (many in period costume) and features such as a Spitfire fighter plane, a Vulcan jet bomber, numerous vintage cars including Formula 1 racing cars, "Buzz" Aldrin, and a General Macarthur impersonator to name just a few.

The website to which the First disputed domain name resolves featured numerous photographs of different female attendees, some in modern dress, others in period costume.

The precise date when the websites were published is not clear. However, the Wayback Machine first captured each website in 2013. The websites captured at that time appear to be in the same as the form of the websites the subject of the Complaint.

In October 2021, the Complainant's representatives sent the Respondent a cease and desist letter in respect of the disputed domain names. The Respondent replied that he would remove the representation of the GOODWOOD logo (that is, UK00917868561) from the website at the Second disputed domain name. He thought there was only one but volunteered to remove any others if the Complainant's representatives identified any error. He subsequently retracted that offer pending confirmation that the Complainant's principal did in fact insist on removal of the logo.

That confirmation was forthcoming. On receiving that confirmation, the Respondent wrote back to the Complainant's representatives offering to swap the Second disputed domain name for another domain name, <dormouse.com>, to be obtained by the Complainant for the purposes of the swap.

The Respondent stated the First disputed domain name was not part of that arrangement but he was willing to adopt a different domain name such as <thegirlsofgoodwood.com> or <racinggirls.com> "for a price".

The Respondent continued to delay on removing the logo unless he received a personal request from the Complainant's principal but also made it clear his offer was to remove the logo only and, if the Complainant wanted the Second disputed domain name, there would be a price.

In June this year, the Complainant's representatives sent a further cease and desist letter. As at August 10, 2022, the website at the Second disputed domain name still featured the logo on the landing page.

Following the filing of the Complaint, the Respondent did remove the logo.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each of the following:

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

¹ These dates are taken from the respect WhoIs reports. The Respondent, however, says he registered the disputed domain names in 2009.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain names are identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain names must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the three registered trademarks identified in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of each disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, both disputed domain names contain the entirety of the Complainant's first registered trademark, Trade mark No. UK00901529007. As the Complainant's trademark remains visually and aurally recognisable within both disputed domain names, both disputed domain names are confusingly similar to the Complainant's first registered trademark.

Given that finding, it is strictly unnecessary to deal with the second and third registered trademarks. However, the same reasoning leads to a finding that the Second disputed domain name is confusingly similar to the Complainant's second registered trademark. In addition, as it is usual to disregard the design elements of a trademark under the first requirement as such elements are generally incapable of representation in a domain name (see for example, [WIPO Overview 3.0](#), section 1.10), the Panel also finds that the Second disputed domain name is confusingly similar to the Complainant's third registered trademark. The verbal elements of that trademark have not been disclaimed and they cannot be described as an inessential or unimportant feature of the trademark.

Accordingly, the Panel finds that the Complainant has established that both disputed domain names are confusingly similar to the Complainant's trademarks and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

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

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain names after the Complainant began using at least the first trademark and also after the Complainant had registered that trademark. His registration of the disputed domain names also occurred after the Complainant began conducting its Goodwood Revival meetings.

The Complainant states that it has not authorised the Respondent to use the disputed domain names. Nor is the Respondent affiliated with it.

The disputed domain names are not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain names could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain names.

These matters, taken together, are typically sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain names.

In the present case, the Respondent claims he informed the Complainant's publicity office that he planned to publish his photographs on a special dedicated website before he was given unfettered passes to access all areas at the event including "the paddock" and "the vaunted assembly area" (which the Respondent claims "NOBODY" (his emphasis) gets access to).

The Respondent has not provided any documentary corroboration of his claim that the Complainant's publicity office authorised him to publish his photographs on a special dedicated website. The Respondent may not be the most reliable witness in his own case. For example, he asserts his websites had never been the subject of any complaint before the Complaint was served on him. As the Complainant points out, that is patently untrue given the cease and desist letters from the Complainant's representatives.

On the other hand, so far as can be told from the photographs on the Respondent's website at the Second disputed domain name, the Respondent does appear to have had very considerable access to the event. It also appears that his sites have been in operation since at least 2013 (if not earlier) without objection.

Assuming in the Respondent's favour that he was given permission to publish his photographs on a special dedicated website, that does not necessarily mean he was authorised to use the Complainant's trademarks in the disputed domain names for the website.

Ultimately, the position is that the Respondent did attend at least one Goodwood Revival Meeting. The Respondent did take photographs of that event and the people and attractions appearing there. Even if he was not authorised to use the Complainant's trademarks in a domain name, paragraph 4(c)(iii) does recognise that a respondent can have a right or legitimate interest in a domain name where making a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

So far as the information before the Panel indicates, the Respondent's use has been noncommercial. The offer to trade the Second disputed domain name or receive a payment for it only arose after the Respondent has been using the Second disputed domain name since at least 2013 and doing so in what cannot fairly be called a pretextual manner. Until the Complainant made its demands about the disputed domain names, the Respondent had not held the Second disputed domain name out for sale generally. Nor does it appear that he has used the websites as vehicles to generate pay-per-click revenues.

The same comments apply to the Respondent's indication that the First disputed domain name was a separate matter and could be available "for a price". The website at the First disputed domain name does refer to plans to publish a coffee table book if a publisher can be found. It does not appear that such a book has been published and, this many years after the event, one might expect there is little commercial attraction in such a proposition.

The overarching issue is whether the Respondent's use of the disputed domain names is "fair". In addressing that question, section 2.5 of [WIPO Overview 3.0](#) recognises that "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner" and that the correlation between the disputed domain name and the Complainant's trademark is often central to this determination.

In considering that, domain names which carry a high risk of implied affiliation with the complainant by reason of their resemblance to the complainant's trademark are much less likely to be fair. So, for example, a domain name which is identical to a trademark will typically be considered to impersonate or suggest sponsorship or endorsement by the trademark owner at one end of the spectrum. At the other, a domain name which is obviously critical of the trademark or trademark owner such as <trademark-sucks.com> is less likely to imply affiliation.

All the circumstances, however, need to be considered and other factors must also be taken into account, section 2.5.2 of [WIPO Overview 3.0](#) explains:

"panels have found the following factors illustrative: (i) whether the domain name has been registered and is being used for legitimate purposes and not as a pretext for commercial gain or other such purposes inhering to the respondent's benefit, (ii) whether the respondent reasonably believes its use (whether referential, or for praise or criticism) to be truthful and well-founded, (iii) whether it is clear to Internet users visiting the respondent's website that it is not operated by the complainant, (iv) whether the respondent has refrained from engaging in a pattern of registering domain names corresponding to marks held by the complainant or third parties, (v) where appropriate, whether a prominent link (including with explanatory text) is provided to the relevant trademark owner's website, (vi) whether senders of email intended for the complainant but (because of user confusion) directed to the respondent are alerted that their message has been misdirected, (vii) whether there is an actual connection between the complainant's trademark in the disputed domain name and the corresponding website content, and not to a competitor, or an entire industry, group, or individual, and (viii) whether the domain name registration and use by the respondent is consistent with a pattern of *bona fide* activity (whether online or offline)."

(These are not necessarily exhaustive of the matters that may require consideration since, as already noted, all the circumstances should be taken into account.)

Here, the Panel considers there is a very real risk of implied affiliation from the Second disputed domain name. That risk is reinforced by the inclusion of the Complainant's logo on the landing page as a kind of

central banner. The Respondent's equivocation over the removal of the logo also does not sit well with his claims of good faith.

On the other hand, many a legitimate "fan site" does use the logos and trademarks of the object of their devotion. Importantly, the landing page does include near the top two different text panels. In one (in largish purple type) under a heading "For the Official Goodwood Revival website, please click here", it states:

"The Goodwood Revival is simply the world's most spectacular, evocative, time-shifting yearly event that will leave you breathless, and feeling that you have actually stepped back in time.

"The organizers and press office---especially Janet and Louise---have been so generous and kind to me, I want to give something back...and this site and my photos are it. Hopefully you will get a feeling for what a wonderful, fun-filled event this is,"

On the opposite side in smaller black type, it is stated:

"This site was created by Paul Olsen, artist, author, photographer, etc., to give you a visual flavor of the incredible Goodwood Revival. If you wish to find out more about the Goodwood Revival, or purchase tickets, please go to the Official Site: "www.goodwoodrevival.com"

"If you would like to attend this wonderful event, I suggest you reserve your tickets well in advance, because the numbers are limited and it is always sold out."

Having regard to the content of the website, the Panel considers that it appears that the Second disputed domain name is being used for legitimate purposes rather than as pretext for commercial gain.

Apart from the Respondent's change of mind about removing the logo on receiving the cease and desist letters, the materials indicate the Respondent reasonably believed the use was truthful and well-founded.

The website text referred to above makes it reasonably clear the website is not operated by the Complainant and direct someone who is looking for the Complainant, or wishing to attend the Complainant's events, to the Complainant's website.

The Complainant does argue that the registration of both disputed domain name is a pattern interfering with its ability to exploit its trademark. Given the domain names the Complainant has already registered, the Panel gives that consideration little weight in the circumstances of this case.

There is no evidence to suggest that the Respondent has taken advantage of people mistakenly coming to his website looking for the Complainant. On the contrary, there are specific directions linking such people directly to the Complainant's own website.

Finally, the content of the Respondent's website at the Second disputed domain name is directly relevant to the disputed domain name.

Standing back and considering the circumstances overall, the Panel considers this is a case where the Respondent has successfully made out a claim to legitimate noncommercial or fair use. The content of the Second disputed domain name, as noted above, is at the high risk end of the spectrum for implied affiliation. Also, as noted above, however, that needs to be considered in the context of all the circumstances. The content of the website makes it very clear that it is not operated by the Complainant. So far as the use made of the Second disputed domain name and the content of the web reveals, it is also not an attempt to garner revenue by trading on the Complainant's trademark such as through pay-per-click advertising. The close resemblance of the Second disputed domain name to the Complainant's trademark does make it a very close call but in the end the Panel considers the Respondent has successfully rebutted the Complainant's *prima facie* case.

Although it is not strictly necessary to decide, the considerations outlined above would also be likely to lead to the Panel finding the Second disputed domain name had not been registered in bad faith under the third requirement having regard to the limitations inherent in a proceeding such as the present on the papers. It is unnecessary to make a final determination on that point.

Turning to the First disputed domain name, the Panel considers there is considerably less risk of implied affiliation. There is some risk as the Complainant's trademark is part of the First disputed domain name. However, the First disputed domain name is different to the Complainant's trademarks and also directly descriptive of the website's content.

This website does not appear to include any links to the Complainant's website. As noted above, the website at the First disputed domain name does refer to browsers being able to buy a putative coffee table book. The Panel takes that into account but, for the reasons mentioned, does not consider that outweighs the overall nature of the site. Overall, the website conveys an impression it is what it says it is, a homage to those attending the event.

The Panel therefore finds that the Respondent has successfully rebutted the *prima facie* case in respect of the First disputed domain name also.

As the Complainant has not established the Respondent does not have rights or legitimate interests either disputed domain names, the Complaint must fail.

C. Registered and Used in Bad Faith

As the Complaint must fail no good purpose would be served by considering the third requirement under the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: October 14, 2022