

ADMINISTRATIVE PANEL DECISION

MAVEN v. Daniel Savage, Mixmasters Pte Ltd.
Case No. D2022-3703

1. The Parties

The Complainant is MAVEN, France, represented by Deshoulières Avocats Associes, France.

The Respondent is Daniel Savage, Mixmasters Pte Ltd., Singapore, represented by Dineff Trademark Law Limited, Belgium.

2. The Domain Name and Registrar

The disputed domain name <mixmasters.net> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 5, 2022. On October 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 5, 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 the Complainant on October 7, 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 October 7, 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 October 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2022. The Response was filed with the Center on November 1, 2022.

The Center appointed John Swinson as the sole panelist in this matter on November 7, 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 Complainant is based in Paris, France and is a société à responsabilité limitée under the French law. The Complainant has been in business since early 2010.

The Complainant's website (in its terms of use) states that Mix with the Masters is a subsidiary of MAVEN S.A.R.L., and offers subscription based access to tutorial videos, webinars, and one-day seminars with professional sound engineers, mixers, and producers. For example, the Complainant's website includes a 52-minute video showing how Jack Antonoff made the musical work "King" by Florence + The Machine.

The Complainant registered the domain name <mixwiththemasters.com> on April 15, 2010.

The Complainant owns trademark registrations for MIX WITH THE MASTERS (in stylized form), including French trademark number 4084775 with the registration date of April 16, 2014.

The Respondent is a Singapore corporation. The Respondent offers track feedback, a supportive community, courses, and weekly workshops on how to build a career as an electronic artist. The courses may cover audio (music) mixing. The Respondent's business also includes mentoring programs and hosting summits and conferences, as well as nightclub and festival parties. The Respondent's founder, Danny Savage, is a music industry podcaster.

Initially, the Respondent delivered live events and conferences under the names DJ Growth Lab (at <djgrowthlab.com>) and DJ Growth Conference (at <djgrowthconference.com>). The Respondent had a paid membership site called "Get Booked Academy" (at <getbooked.academy>).

The Respondent rebranded in 2020 because, according to the Respondent, nightclubs and other venues where DJs work were closing due to Covid-19. The Respondent acquired the domain name <mixmasters.tv> on March 18, 2020. The Respondent acquired the disputed domain name via a broker. The content on the website at <getbooked.academy> was repurposed for the website at the disputed domain name.

The disputed domain name was registered on September 27, 2002. The Respondent acquired the disputed domain name in September 2020 (according to the Respondent) or December 2020 (according to the Complainant).

The website at the disputed domain name focuses on electronic music, such as underground houses and techno music. At the present time, the website at the disputed domain name states: "All The Tools You Need in One Place to Build a Successful Career as an Electronic Artist. As a Member You'll Get Instant Access To Hundreds Of Courses, Live Weekly Workshops, Track Feedback and a Supportive Community You Need To Take Your Music Career To The NEXT LEVEL!"

5. Parties' Contentions

A. Complainant

In summary, the Complainant makes the following submissions:

The Complainant has been exploiting the domain name <mixwiththemasters.com> since April 15, 2010.

The Complainant owns registered trademarks for MIX WITH THE MASTERS in a stylized form, written across two or three lines, with MIX and MASTERS being the distinctive part of these trademarks. This logo trademark was adopted in 2014.

The disputed domain name includes MIX and MASTERS which are the key features of the Complainant's trademark.

Both the Complainant's and the Respondent's logo includes words in white text on a black background.

The Complainant and its services are well-known throughout the world.

The disputed domain name is endangering the Complainant and the proper functioning of its trademarks. The Respondent provides services that are identical or, at the very least, very similar to those that the Complainant offers from its own website and through the MIX WITH THE MASTERS trademarks.

The Respondent's use of the disputed domain name and of the website exploited is intended to infringe the Complainant's trademarks. The services sold by the Respondent through the disputed domain name are identical or at least substantially similar to the Complainant's services.

The Respondent was never authorized by the Complainant to use its trademarks. Therefore, the Respondent cannot in any way claim to be a legitimate user of the Complainant's trademarks.

The Complainant's website has acquired a certain reputation as demonstrated by its position in the search results of the Google search engine for the terms "mix with the masters" and "mix masters". Therefore, the Respondent should have known that MIX WITH THE MASTERS trademarks were owned by the Complainant. The Respondent could not ignore either that the disputed domain name was already used in this domain. However, the Respondent decided to register the disputed domain name in order to take advantage of the Complainant's trademark and reputation.

The Respondent's knowledge of what the MIX WITH THE MASTERS trademarks represented at the time the Respondent bought the disputed domain name. A simple Google search of the terms "mix master" would have convinced the Respondent not to use the disputed domain name as a confusingly similar domain name which was already used in the very specific domain of music production.

The Complainant's representative sent a letter by email (and a follow up letter) to the Respondent, regarding trademark infringement. The Respondent did not respond to these letters.

The Respondent deliberately chose to offer services and to exploit a website in the highly specific area of music mixing training courses, which is an area about which the Respondent could not have ignored the existence of the Complainant's activity. The Respondent was aware of the existence of the Complainant's activity and trademarks and thus the Respondent clearly bought the disputed domain name and uses it in bad faith to attract Internet users by creating a likelihood of confusion with the Complainant's trademarks for its own commercial gains.

B. Respondent

In summary, the Respondent makes the following submissions:

The Complainant's trademarks are figurative trademarks and have specific visual elements. For example, the word "mix" is written in a large font in white letters. The words "with the" are written in a different font. The word "masters" is written in a white font that is larger than the font used for writing the words "with the" and smaller than the font used for writing the word "mix".

The words "mix with the masters" are completely descriptive in relation to the services provided by the Complainant. The Complainant's services include music mixing education taught by a list of music experts called "Masters".

The trademarks were likely registered because they contain distinctive figurative elements (otherwise the trademark offices would have rejected the trademark applications). The Complainant should not be entitled to monopolize terms commonly used by many people.

The disputed domain name in no way evokes or conjures up the Complainant's trademark.

The Respondent's logo includes only one word element "mixmasters" and each letter of that element is written in an identical font. The letter "m" includes a specific and distinctive black line. In comparison, the Complainant's logo includes words of different size and four word elements. Those are obvious differences which the Complainant attempts to disregard.

The Respondent offers track feedback, a supportive community, courses, and weekly workshops on how to build a career as an electronic artist. The courses may cover audio (music) mixing as well. However, in comparison with the Complainant, the Respondent does not teach recording and studio mixing as well as mastering. The Respondent's market is focused on electronic music only and covers mainly underground house and techno music, whereas the Complainant focuses on rock and band music. The Respondent teaches not only music production, but also branding, business, DJing, and various other matters related to how to become an artist, not just a producer. In addition to offering courses, the Respondent offers a record label and hosts villa retreats.

The Respondent rebranded its business from "DJ Growth Lab" to "Mixmasters" and used the dispute domain name to operate its new brand "Mixmasters". The brand "DJ Growth Lab" focused mainly on DJs and, due to the COVID-19 lockdowns, the Respondent decided to rebrand the business because nightclubs and other venues where DJs work were closing. That is why the Respondent purchased the disputed domain name in April 2020. It had no intention to benefit from the trademark of the Complainant. The Respondent just aimed to find a domain name that was suitable for its rebranded business.

The website associated with the disputed domain name has more than 200 monthly subscribers and hosts regular villa retreats in Ibiza and soon in Mexico. The Respondent has evidence of business trading in the form of stripe financial statements indicating that the Respondent generates income through the website associated with the disputed domain name.

The elements of the disputed domain name "mix" and "masters" are suggestive in relation to the services provided through the website associated with the disputed domain name. The Respondent has chosen the disputed domain name, without intending to infringe the Complainant's trademarks or otherwise benefit from them. The term "mixmasters" has a dictionary meaning and means a DJ.

The Complainant does not provide any evidence showing that the Respondent registered the disputed domain name with a bad faith intention.

The Respondent denies knowledge of the Complainant.

The Complainant operates in a completely different market than the Respondent and teaches different skills than the Respondent and the Complainant's business may look similar to the Respondent's business only to someone who does not have knowledge about music production.

In 2021, the Respondent paid a professional marketing company GBP 2,500 for a complete rebrand of its marketing materials. The marketing company delivered a Mixmasters Brand Guide which the Respondent uses.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

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

The burden of proof of each element is borne by the Complainant.

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 the Panel deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the trademark of the Complainant.

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 name must be shown to be identical or confusingly similar to that trademark.

The Complainant owns registered trademarks for MIX WITH THE MASTERS.

The Complainant's trademark MIX WITH THE MASTERS is not identical to the disputed domain name.

The words "mix" and "masters" are part of the Complainant's trademark and are also included in the disputed domain name. Without a doubt, "mixing" is a common term used in the music business. The Respondent uses "mixmasters" as a single word, whereas the Complainant uses "mix" and "masters" as separate words. In light of this, it may not be readily apparent that MIX WITH THE MASTERS is confusingly similar to the disputed domain name.

"[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar [...]." See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

After considering the submissions of both the Complainant and the Respondent in detail, for the purposes of the Policy, the Panel decides that the MIX WITH THE MASTERS trademark is confusingly similar to the disputed domain name because the dominant words in the Complainant's trademark (*i.e.*, "mix" and "master") are recognizable in the disputed domain name.

The Complainant succeeds in respect of the first element of the Policy.

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 the 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.

As a general principle, the less distinctive the Complainant's trademark, the more likely is the Respondent's legitimate interest.

The Respondent provides evidence that the Respondent is using the disputed domain name in connection with a *bona fide* business. The Complainant's submission on this point is that the Respondent's use of the disputed domain name is infringing use, that "the Respondent did choose to register the subsequent domain name in order to take advantage of 'Mix with the Masters' and MAVEN's reputation", and therefore such use is not *bona fide*. However, the Complainant provides no evidence to support this statement.

The Panel concludes that the Respondent's use of the disputed domain name, prior to notice of the dispute, was (and remains) use in connection with a *bona fide* offering of services. The Respondent's business is clearly legitimate. Industry publications refer to the Respondent and its business. The Respondent's website is professional with relevant content. The Respondent does not try to hide or shield its name or location. The Respondent's business has customers and revenue.

For the reasons discussed below, there is no evidence that the Respondent selected the disputed domain name to take advantage of the Complainant's trademark or reputation.

The Respondent meets paragraph 4(c)(i) of the Policy.

The Complainant does not succeed in relation to the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

There is no evidence that the Respondent registered or used the disputed domain name in bad faith.

The Respondent's Mixmasters brand is not identical to the Complainant's MIX WITH THE MASTERS trademark. As stated above, "mixing" is a common music industry term. "Mixmaster" is a term sometimes used in relation to an expert DJ. (Mixmasters is also a famous brand for a kitchen appliance mixer.) It is not unlikely that the Respondent would have selected Mixmasters in its rebrand without knowledge of the Complainant.

The Respondent states the Respondent was not aware of the Complainant at the time the Respondent devised the Mixmasters brand or purchased the disputed domain name.

The Respondent's conduct does not demonstrate the Respondent's knowledge of the Complainant and its trademark when the Respondent purchased the disputed domain name (or when the Respondent decided to rebrand from "DJ Growth Lab" to "Mixmasters"). Although both the Complainant and the Respondent are in the same field (the music industry) and there is some overlap of the type of services offered by the Parties, the Respondent's business is directed to a different segment of the music industry to the Complainant. "Mixing" is a common term related to the Respondent's services. Therefore, the Panel finds, more likely than not that, the Respondent chose these combination of terms due to its relation with the Respondent's services rather than due to the Complainant's MIX WITH THE MASTERS trademark. In this regard, there is no evidence that the Respondent selected the term "mixmasters" to take advantage of the Complainant's MIX WITH THE MASTERS trademark.

The disputed domain name was registered in 2002, eight years prior to the Complainant's first use of the MIX WITH THE MASTERS trademark. This fact does not directly assist the Respondent, because the Respondent acquired the disputed domain name in 2020.

There is also no evidence that the Respondent attempted to trade off the Complainant's reputation.

The Complainant does not succeed in relation to the third element of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: November 19, 2022