

ADMINISTRATIVE PANEL DECISION

Mav Media, LLC v. I S, ICS INC

Case No. D2022-3764

1. The Parties

The Complainant is Mav Media, LLC, United States of America (“United States”), represented by Silverstein Legal, United States.

The Respondent is I S, ICS INC, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <dirtyrouletee.com> 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 7, 2022. On October 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 11, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 amendment to the Complaint on October 18, 2022.

The Center verified that the Complaint, together with the amendment to the 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 November 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 28, 2022.

The Center appointed Theda König Horowicz as the sole panelist in this matter on December 6, 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 owns and operates the website located at the domain <dirtyroulette.com> and has used its domain for several years to provide an adult video chat platform that allows users to chat with each other on the Internet by video.

The Complainant's DIRTYROULETTE trademark is registered in the United States under Registration No. 5,109,884 filed on June 30, 2016, and registered on December 27, 2016, for various services in class 38. This trademark was first used in commerce by the Complainant's predecessor as of 2010.

The disputed domain name was registered on April 2, 2017, and engages in a dynamic redirect to various third party sites.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical or confusingly similar to the trademark in which it has rights. The disputed domain name incorporates an obvious misspelling of its DIRTYROULETTE mark, and ".com" is as a standard registration requirement designation that does not sufficiently distinguish the disputed domain name from the Complainant's mark.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent, whether express or implied, to use the DIRTYROULETTE mark in the disputed domain name or in any other manner. Furthermore, the Respondent is not commonly known by the mark and does not hold any trademarks for the disputed domain name. In addition, the disputed domain name resolves, through redirection, to a rotating set of third-party websites unaffiliated with the Complainant in an apparent scheme for the Respondent to derive commissions from "affiliate marketing" programs. By doing so, the Respondent is unfairly and in bad faith profiting from the Complainant's reputation and its DIRTYROULETTE mark which is not a *bona fide* offering of goods or services.

The Complainant finally submits that the disputed domain name was registered and is being used in bad faith. The disputed domain name was thus registered after the mark was registered and well long after the Complainant had acquired common law rights to the mark. Case law under the UDRP has established that the registration of a domain name that is confusingly similar to a widely known trademark, as is the case here, creates a presumption of bad faith. The fact that the disputed domain name redirects to a website that contains harmful programs clearly constitutes bad faith use under the UDRP and shows that the Respondent seeks to profit from and exploit the Complainant's mark. Additionally, the disputed domain name is used with a revenue-generating scheme under which the Respondent receives some compensation from revenues generated by redirects through the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent 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 domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The Complainant has shown to have obtained trademark rights in DIRTYROULETTE in the United States.

According to section 1.7, of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In 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 to that mark for purposes of UDRP standing.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark DIRTYROULETTE since it contains an obvious misspelling of this mark, where the last "t" has been replaced with an added "e". See section 1.9 of the [WIPO Overview 3.0](#).

Furthermore, the generic Top-level Domain ("gTLD") ".com" is a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the conditions in paragraph 4(a)(i) of the Policy are fulfilled in relation to the disputed domain name.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in the use of a domain name. The list includes:

- (i) the use of the domain name in connection with a *bona fide* offering of goods or services;
- (ii) being commonly known by the domain name; or
- (iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1, [WIPO Overview 3.0](#).

The Complainant made sufficient statements in order to demonstrate that the Respondent would have no rights or legitimate interests into the disputed domain name.

In particular, the Complainant has not licensed or otherwise permitted the Respondent to use its trademark and there are no circumstances in this case nor evidence in the case file showing that the Respondent would be commonly known by the disputed domain name or that a legitimate business would be run by the Respondent under the disputed domain name.

The Panel therefore finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent who has chosen not to reply.

The Respondent has not rebutted the Complainant's *prima facie* case, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings.

As already stated before, nothing is contained in the case file which would show that the disputed domain name has been legitimately noncommercial or fair used, either noncommercially or fair, by the Respondent or that that the Respondent would have any rights or legitimate interests in the disputed domain name. Rather, the disputed domain name resolves, through redirection, to a rotating set of third-party websites unaffiliated with the Complainant in an apparent scheme for the Respondent to derive commissions from "affiliate marketing" programs. Evidently, the Respondent seeks to utilize the typosquatting disputed domain name to mislead Internet users, unaware of the typographical error, to such third-party sites for the Respondent's presumed commercial gain, which cannot confer rights or legitimate interests upon the Respondent.

The Panel therefore finds that the conditions in paragraph 4(a)(ii) of the Policy are fulfilled in relation the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of the domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder 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 the holder has engaged in a pattern of such conduct; or
- (iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name was registered and is being used in bad faith.

Given the circumstances of the case, including the distinctive nature of the Complainant's trademark DIRTYROULETTE, it is inconceivable to the Panel that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name he chose could attract Internet users in a manner that is likely to create confusion for such users. Rather, given the typosquatting nature of the disputed domain name, the Panel finds that creating confusion was the intent of the Respondent upon registering the disputed domain name.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name resolves to various third party sites, including a parking page providing related links to chat videos or apps and an offer for sale page. Accordingly, the Respondent is actively using the disputed domain name by creating or attempting to create a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's website or location or of a product or service on the holder's website or location. See section 3.5 of the [WIPO Overview 3.0](#).

The silence of the Respondent in these proceedings is an additional evidence of bad faith.

The Panel therefore finds that the conditions in paragraph 4(a)(iii) of the Policy is fulfilled in relation to the disputed domain name.

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 <dirtyroulette.com> be transferred to the Complainant.

/Theda König Horowicz/

Theda König Horowicz

Sole Panelist

Date: December 27, 2022