

ADMINISTRATIVE PANEL DECISION

Mav Media, LLC v. Jiri Capcuch and Wu Yu
Case No. D2022-3803

1. The Parties

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

The Respondents are Jiri Capcuch, Czech Republic; and Wu Yu, China.

2. The Domain Names and Registrar

The disputed domain names <dirtyroulette.com> and <dirtyrulet.com> are registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 11, 2022. On October 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 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 October 17, 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 25, 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 Respondents of the Complaint, and the proceedings commenced on October 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 15, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default November 16, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on November 23, 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 name <dirtyroulette.com> and has used its domain name for several years to provide a video chat platform that allows users to chat with each other on the World Wide Web by video.

The Complainant's DIRTYROULETTE trademark is registered in the United States under US Registration No. 5,109,884 filed on June 30, 2016, and registered on December 27, 2016 for various services in class 38. The Complainant also states that it has established extensive common law rights through use of the DIRTYROULETTE mark throughout the world since 2010.

The disputed domain name <dirtyroulettee.com> was registered on December 11, 2020. The disputed domain name <dirtyrulet.com> was registered on May 22, 2021. At the time of filing of the Complaint, both disputed domain names resolved to websites with pay-per-click ("PPC") links to various third-party websites some of which appear to offer goods and services that are in competition with the goods and services of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant submits that a consolidation of the Complaint, which is filed against two Respondents, is appropriate in this case since all evidence suggests that the registrants of the disputed domain names are either the same person, entity, or network; or are somehow connected to each other; or are under common control aimed at intentionally infringing the Complainant's marks and harming consumers. The disputed domain names (1) contain the same structure (contain typographical errors); (2) resolve to websites with the same layout or similar content; (3) offer the same services, product plans, and prices; (4) were registered around the same time; (5) were registered with the same Registrar; (6) are associated with the same Domain Name Servers; and (7) are associated with similar IP addresses.

As to the substance of the matter, the Complainant contends that the disputed domain names are confusingly similar to the trademark in which it has rights. The disputed domain names incorporate obvious misspellings of its DIRTYROULETTE mark, and ".com", as a standard registration requirement, does not sufficiently distinguish the disputed domain names from the Complainant's mark.

The Complainant further contends that the Respondents have no rights or legitimate interests in the disputed domain names. The Respondents have 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 names or in any other manner. Furthermore, the Respondents are not commonly known by the disputed domain names and does not hold any trademarks for the disputed domain names.

The Complainant finally contends that the disputed domain names were registered and are being used in bad faith. The disputed domain names were thus registered long after the Complainant had acquired common law rights to the mark and well after the mark was registered, and 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 disputed domain names are being used to redirect visitors to websites containing PPC links apparently related to the Complainant's competitors. Such use is for commercial gain and creates a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Respondents' websites, which constitutes bad faith use under the UDRP.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary Matter: Consolidation

Before addressing the three elements of the Policy, the Panel must first address a procedural issue, namely whether to accept in the present procedure that the Complaint against the two distinct Respondents may be consolidated.

As it is stated in the first paragraph of section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") that "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario". The second paragraph of the section then lists several factors that UDRP panels have considered in determining whether a consolidation is appropriate.

In this case, the disputed domain names are both misspellings of the Complainant's mark, they are registered with the same Registrar within a relatively short period of time, and are associated with the same Domain Name Servers. Applying the abovementioned principles to these facts, and in the absence of any response from the Respondents, the Panel finds that the Complainant has established more likely than not that the disputed domain names are subject to common control.

The Panel further finds that consolidation would be fair and equitable to all parties and procedurally efficient.

The Panel therefore allows the consolidation as requested by the Complainant pursuant to paragraph 10(e) of the Rules. The Respondents will therefore be referred to as the "Respondent" below.

6.2. Substantive Matters of the Complaint

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 Panel finds that the disputed domain names are confusingly similar (in the sense of the Policy) to the Complainant's registered trademark DIRTYROULETTE since they contain obvious misspellings of this mark. See section 1.9 of the [WIPO Overview 3.0](#). 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 both of the disputed domain names.

B. Rights or Legitimate Interests

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark and given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names.

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 names on the part of the Respondent in these proceedings. Furthermore, previous UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

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

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 in terms of its services provided for video chat platform, and the disputed domain names are misspellings of that trademark and the Complainant's domain name <dirtyroulette.com>, it is inconceivable to the Panel that the Respondent registered the disputed domain names 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.

The Panel therefore finds that the disputed domain names were registered in bad faith.

The Respondent is using the disputed domain names actively for PPC pages that contain links to websites of third parties some of which appear to offer goods and services of competitors of the Complainant. It is thus obvious to the Panel that the Respondent is using the disputed domain names in bad faith by intentionally attempting to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its websites. See section 3.5 of the [WIPO Overview 3.0](#).

Noting that no response has been filed, that there appears to be no conceivable good-faith use that could be made by the Respondent of the disputed domain names, and considering all the facts and evidence, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

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 names <dirtyroulettee.com> and <dirtyrulet.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: December 7, 2022