

ADMINISTRATIVE PANEL DECISION

NoCopyrightSounds Limited v. ladsoftware inc
Case No. D2022-3810

1. The Parties

The Complainant is NoCopyrightSounds Limited, United Kingdom, represented by Adlex Solicitors, United Kingdom.

The Respondent is ladsoftware inc, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain names <nocopyrightsounds.com> (first disputed domain name) and <nocopyrightsounds.net> (second disputed domain name) are registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 12, 2022. On October 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the first disputed domain name. On October 12, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the first disputed domain name which differed from the named Respondent (Contact Privacy Inc. Customer 7151571251) 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 Center received three emails communications from the Respondent on October 17, 2022. The Complainant filed an amended Complaint on October 19, 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 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2022 and was extended to November 17, 2022. The Response was filed with the Center on November 11, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on November 22, 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.

On November 24, 2022, the Complainant submitted an unsolicited supplemental filing, amongst other things, requesting to add a second domain name to the dispute, <nocopyrightsounds.net>. On November 29, 2022 and following a request for verification from the Center, the Registrar confirmed that the Respondent is the registrant of the second disputed domain name and provided the contact details.

On December 1, 2022, the Panel issued Procedural Order No. 1 in the exercise of its general powers under paragraph 10 of the Rules:

- (a) inviting the Complainant to submit any further arguments in support of its request to include the second disputed domain name in the Complaint by December 5, 2022; and
- (b) permitting the Respondent to file submissions in response to the Complainant's request by December 10, 2022.

On December 2, 2022, the Complainant indicated it did not wish to file further submissions. On December 9, 2022, the Respondent submitted a supplemental filing.

On December 15, 2022, the Complainant emailed the Center objecting to the admissibility of the Respondent's supplemental filing and requesting an opportunity to be heard.

As the Complainant's objection to the Respondent's supplemental filing claimed there were assertions of fact which needed to be addressed, on December 20, 2022 the Panel issued Procedural Order No. 2 in the exercise of its general powers under paragraph 10 of the Rules:

- 1) the Complainant is invited to submit a supplemental filing by December 23, 2022, including any evidence and submissions in support, identifying the new factual matters which the Complainant disputes;
- 2) the Complainant is invited to include in its supplemental filing further information as to the Complainant's, or its predecessor's, reputation and notoriety at the time of registration of the disputed domain name <nocopyrightsounds.com> on September 1, 2013;
- 3) the Respondent is granted until December 30, 2022, to provide any response to the matters raised by the Complainant in any supplemental filing filed pursuant to this Order;
- 4) the decision due date is extended until January 6, 2023.

The Complainant submitted a supplemental filing on December 20, 2022. The Respondent submitted a second supplemental filing on December 26, 2022.

4. Factual Background

On June 17, 2014, the Complainant was incorporated to operate a "copyright free record label and publishing business" to provide free to use music to the content creator community under the names "NCS" and "NoCopyrightSounds".

From the Complainant's supplemental filing in response to Procedural Order No. 2, it appears that the Complainant takes an exclusive licence of the relevant track for 20 years and makes it available for use free from fees or royalty payments by independent creators on YouTube and Twitch. It also monetizes the track through activities such as streaming through Spotify and Apple Music.

Although it was incorporated in June 2014, the Complaint claims that the services the Complainant provides have been provided under the names “NCS” and “NoCopyrightSounds” since 2011.

There is indeed a YouTube channel “NCS Copyright Free Music” operated by “NoCopyrightSounds” and which according to the statistics published by YouTube has been operational since August 14, 2011. The YouTube channel was created by a then 24 year old, Mr. William Woodford who subsequently became the Complainant’s founder.

At the time the Complaint was submitted, the YouTube channel has received 10,554,188,622 views. There were 32 million subscribers. According to the Complaint, the Complainant’s music has been included in over 183 million videos across YouTube which have a total view count of 550 billion.

The Complainant has also operated a website at <nocopyrightsounds.co.uk> since 2014. This domain name now redirects to a website at <ncs.io>. Google Analytics data included in the Complaint shows that the website had approximately 6.7 million users between August 2021 and August 2022.

A feature of the Complainant’s website is the heavy use of black as the background colour and, in the case of individual titles, there is a fluorescent circle which appears to have a coloured halo. The “thumbnails” for the individual tracks, or videos, on the YouTube channel are also black rectangles and feature a fluorescent circle in the center. In the videos, the circle pulses with the beat of the music.

The Complainant also has a Facebook page with 900,000 followers and a Twitter account with 117,000 followers. The Page Transparency information for the Facebook page shows that it was created on September 9, 2011 as “NoCopyrightSounds” and changed its name to “NCS” on January 23, 2016.

The Complaint includes evidence that the Complainant owns at least two registered trademarks for NOCOPYRIGHTSOUNDS:

- (a) United Kingdom registered trademark no. UK00003062384, which was registered on December 19, 2014 with effect from July 1, 2014 in respect services in International Class 41;
- (b) European Union Trademark No. 018353864, which was registered on June 24, 2021 with effect from December 11, 2020 in respect of goods and services in International Classes 9, 25, 38, 41, and 45.

There is also a pending trademark application in the United States, Serial No. 90401852, which was filed on December 22, 2020 and was published for opposition on February 1, 2022. This application also specifies goods and services in International Classes 9, 25, 38, 41, and 45.

The Respondent registered the first disputed domain name on September 1, 2013. The second disputed domain name was registered on April 19, 2014.

YouTube Analytics data submitted with the Complainant’s second supplemental filing discloses that at September 1, 2013, the Complainant’s (then Mr. Woodford’s) YouTube channel “NoCopyrightSounds” had more than 33 million subscribers and had received over four million views in the previous 48 hours. Further, between August 2011 and September 1, 2013, the YouTube channel “NoCopyrightSounds” had gained almost 17 million views.

On July 28 and 29, 2014, there was an email exchange between Mr. Woodford and the Respondent’s principal, Mr. Okeh. So far as the materials before the Panel show, the exchange was initiated by Mr. Woodford who, after explaining that he was the founder of the Complainant and about its YouTube channel, indicated he would like to discuss purchasing the domain name from the Respondent. Mr. Woodford’s email asked if the Respondent had “a Skype I can contact you on?”

The Respondent's reply was:

"No Skype."

"What's your offer?"

After some further exchanges in which Mr. Woodford provided his mobile (cell) number and the Respondent indicated he would call Mr. Woodford when he got off work, the exchange seems to have ended with an email message from the Respondent stating simply "Domain is not for sale."

On October 14, 2014, however, the Respondent emailed Mr. Woodford with the following request:

"Hey, how about we work together?"

"i have some artist contacting me thinking that i'm you."

"asking to sign him."

The materials before the Panel do not disclose any further communications until June 2022, discussed further below.

From captures by the Wayback Machine, it appears that the first disputed domain name initially resolved to a blank parking page provided by the webhost.

By October 23, 2014, however, the disputed domain name resolved to a webpage which featured a black background, with a dotted pattern band across its middle and which featured a circle in its center. The circle itself is hollow with a fluorescent border and surrounded by an orange halo or nimbus. In the top right hand corner, there was a button "Contact Me". Beneath the central, dotted band appeared icons familiar as the music controls for play, go to start, go to end, and "repeat".

By July 2015, the website listed eight tracks, each of which the Complainant says were tracks made available on its website.

The website was unchanged in September 2022, save for the addition of a small notice in the top left-hand corner "Under Construction – working hard to have this launched by the end of the year". So far as the Panel can ascertain, this notice does not appear on the Wayback Machine captures up to and including August 2022. After the Complaint was filed, however, the eight tracks have been removed and two different tracks added. The Complainant does not appear to contend that these two different tracks are tracks it controls the copyright over.

Earlier on June 8, 2022, the Complainant's General Manager emailed the Respondent to inquire about purchasing the first disputed domain name again and offering a payment of 4,000 United States dollars. The Respondent replied in an email "USD 10 million" and half an hour later with a further email "USD 15 million."

Although neither party has submitted screenshots of the website to which the second disputed domain name resolves, captures by the Wayback Machine show that from 2016 the content and appearance was the same as for the website to which the first disputed domain name resolved.

The Complainant states it discovered the existence of the second disputed domain name only when it was referred to in the Response.

5. Discussion and Findings

Paragraph 3(c) of the Rules permits consolidation of complaints where the domain names are registered by the same domain-name holder. That is the case here. Accordingly, the Panel accepts the Complainant's request to include the second disputed domain name in the Complaint. That is particularly appropriate in the present case where both disputed domain names are identical (apart from the generic Top-Level Domain ("gTLD")) and involve the same trademark rights of the Complainant.

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

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

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 each disputed domain name is 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 name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of at least the two registered trademarks for NOCOPYRIGHTSOUNDS.

The second stage of this inquiry simply requires a visual and aural comparison of the 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 date and place the trademark rights were acquired, 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. For the purposes of this requirement under the Policy, therefore, it does not matter that the Complainant's trademarks were registered after the Respondent registered the first disputed domain name.

In undertaking the comparison required for the first requirement under paragraph 4(a) of the Policy, it is permissible in the present circumstances to disregard the gTLD component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" and ".net" gTLDs, both disputed domain names consist solely of the Complainant's registered trademark.

Accordingly, the Panel finds that the Complainant has established that the disputed domain names are identical with the Complainant's trademark 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 names.

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.

First, generally a Complainant will not be able to establish that a Respondent did not have rights or legitimate interests in a disputed domain name where the Respondent registered the disputed domain name before the Complainant registered its trademark and even, as in this case, before the Complainant came into corporate existence. That general rule may not apply, however, where the Complainant is a successor in title to some prior holder or user of the trademark and it appears from the record in the proceeding that the Respondent was in fact attempting to capitalise unfairly on those prior rights.

[WIPO Overview 3.0](#), section 3.8 (in the context of bad faith) gives examples such as a Respondent registering a domain name shortly after a public announcement by some other person of the adoption of the trademark or the filing of a trademark application. [WIPO Overview 3.0](#), section 3.8 gives other examples.

In the present case, it appears clear that the Complainant's predecessor, Mr. Woodford, had built up a very substantial reputation in "NoCopyrightSounds" through at least his YouTube channel well prior to the Respondent's registration of the first disputed domain name. The evidence cited in section 4 above clearly establishes that Mr. Woodford as the Complainant's apparent predecessor had developed rights in "NoCopyrightSounds" as an unregistered trademark for the purposes of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.3. As Mr. Woodford's successor in title, the Complainant appears to be entitled to the benefit of those rights.

In the circumstances, therefore, the Panel finds that the registration of the first disputed domain name before the Complainant had registered its trademarks or was incorporated, does not automatically establish that the Respondent has rights or legitimate interests in the disputed domain names.

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 or its principal is commonly known from which the disputed domain names could be derived. From the available record, the Respondent does not claim any trademarks for the disputed domain names.

The way the Respondent has been using the disputed domain names does not qualify as a legitimate noncommercial or fair use for the purposes of paragraph 4(c)(iii) of the Policy.

Given the scale of use and reputation of the Complainant's trademark by Mr. Woodford as the Complainant's predecessor in title, the Panel considers it highly likely that the use of the disputed domain names in connection with a website of the kind the Respondent says he is developing would misrepresent to Internet users that the website was offered by or with the authority of the Complainant or, before its incorporation, Mr. Woodford as its predecessor in title. That is, the disputed domain names and the Respondent's website create a very high likelihood of deception or confusion as to source and so constitute a passing-off or unfair competition.

Ordinarily, the use of a disputed domain name in connection with what appears to be (or intended to be) a competing service, or at least a service offered under a name which would readily be mistaken for a service offered by or with the authority of the Complainant would not qualify as a good faith offering of goods or services under the Policy.

Correspondingly, demonstrated preparations to use the disputed domain name for such a service would not qualify as demonstrable preparations for an offering of goods or services under the Policy in good faith.

It is in dispute between the parties whether the Respondent knew of the Complainant's (at the time Mr. Woodford's) trademark when registering the disputed domain names. Lack of knowledge of prior conflicting rights would not necessarily constitute a defence to an action for passing off or unfair competition, although it might affect what remedies are available. It will be convenient, therefore, to consider this issue more closely in the context of bad faith in section 5C below. In the meantime, the Panel notes that the materials in the record in this proceeding show preparations for use by the Respondent only after Mr. Woodford contacted the Respondent in July 2014. That is, after the Respondent became aware of the Complainant and its trademark.

In these circumstances, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name and the Respondent has not successfully rebutted that *prima facie* case.

Accordingly, the Complainant has established the second requirement under the Policy in respect of both disputed domain names.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd* WIPO Case No. [D2010-0470](#).

Paragraph 4(b) identifies situations which may demonstrate that registration or use of a disputed domain name was not in bad faith under the Policy:

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of [the disputed] domain name in bad faith:

- (i) circumstances indicating that [the Respondent] has registered or [the Respondent has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or
- (ii) [the Respondent has] registered the [disputed] 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 Respondent has] engaged in a pattern of such conduct; or
- (iii) [the Respondent has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] website or location or of a product or service on [the Respondent's] web site or location.

The instances of bad faith set out in paragraph 4(b) of the Policy are examples only, intended to illustrate types of conduct which is caught by the Policy. See *Do The Hustle, LLC v Tropic Web* WIPO Case No. [D2000-0624](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Complainant contends the Panel should find that the Respondent registered and is using the disputed domain names in bad faith, from a combination of matters:

- (1) Noting the disputed domain names are identical to the Complainant's trademark, the Complainant contends it is inconceivable the Respondent registered the disputed domain names without knowledge of the Complainant's trademark;
- (2) The Complainant points out that its trademark is very well known (and was by September 1, 2013) and long pre-dates the Respondent's registration of the first disputed domain name;
- (3) The Respondent is operating in the same industry as the Complainant and therefore was clearly aware of the Complainant's trademark, which is and was very well known;
- (4) the Respondent's website is a substantial copy of the Complainant's sites – being essentially black with a fluorescent circle centred in the middle;
- (5) the essentially unchanging nature of the Respondent's website since at least 2015;
- (6) the Respondent's unsolicited approach in October 2014 to “work together” with the Complainant which the Complainant contends was a euphemism for seeking a purchase offer backed up with a warning about the potential for confusion; and
- (7) the extraordinarily high prices the Respondent has sought for the purchase of the first disputed domain name.

The Respondent, through its principal, Mr. Okeh, states that it was not aware of the Complainant's (then Mr. Woodford's) trademark when he registered the first disputed domain name and only became aware of it following the initial contact by Mr. Woodford in July 2014. The Respondent says, having decided to develop

a centralised application (like Sound Cloud) for underground music with no copyright, it registered the first disputed domain name having considered several alternatives – “nocopyrighttrack, nocopyrightsong, nocopyrightmusic, nocopyrightsound” – and added the “s” to make “sound” plural.

In proceedings such as these, which are determined on the papers and without the benefit of *viva voce* evidence, it is very hard to set aside a frank denial of knowledge unless the denial itself is implausible or the objective circumstances contradict or undermine the denial.

In the Response, the Respondent further states that he has a love for “underground music”. He registered the first disputed domain name as he wished to establish a centralised application (like Sound Cloud) for underground music free from copyright. The Respondent recognises there have been considerable delays in developing this project. The Respondent states that Mr. Okeh works full time in a 9 to 5 job with many side projects as a web developer, the proposed “NoCopyrightSounds” application is not his only side project and additionally many different factors have contributed to the delay. In addition to the limits on Mr. Okeh’s time, they include the move from the original framework to a Laravel framework then to a Nodejs framework with consequent changes in languages, as well as the addition of new features.

The Annexes to the Response include what the Respondent states are screenshots showing, amongst other things, the various folders in the Respondent’s “projects” folder, the properties data for the Respondent’s original “nocopyrightsounds” Properties folder and the properties data for the Respondent’s Laravel and Nodejs project versions labelled, respectively, “ncrs2” and “ncrs”.

The screenshot for the original Properties folder does not show the date of creation but states the folder was last modified on November 23, 2016; the screenshot for the Laravel version shows a creation date of March 8, 2021 and, curiously, a last modified date of October 6, 2020; for the Nodejs version, the creation date is March 8, 2021 and the last modified date is September 19, 2021. While the screenshots of the Respondent’s website in evidence show listings for the same eight tracks from 2015 until the Complaint was filed, the Respondent claims he has been conducting testing on 160 files.

The Panel of course cannot know whether the Respondent did in fact know about the Complainant’s (then Mr. Woodford’s) trademark when the Respondent registered the first disputed domain name.

While the Complainant contends its trademark is distinctive and unusual and, the Panel acknowledges, registration of the trademark was achieved in the United Kingdom within five months, the Panel cannot reject as implausible the Respondent’s claim that the expression “no copyright sounds” was adopted because of its descriptive applicability.

The Respondent says, and the Complainant appears to accept, that the Respondent obtained the eight tracks in question from the NewGrounds website. From the screen capture of the uploading of one of the tracks on the NewGrounds site used by the Respondent it does not appear, and the Complainant does not claim, that the tracks uploaded included notification that the tracks were exclusively licensed to the Complainant (or its predecessor).

The Panel accepts that many developers prefer to operate their systems in “dark mode”. The NewGrounds website which, along with Sound Cloud, the Respondent says he spent much time on in pursuit of his interest is also an example of the use of “dark mode” in public facing websites.

The combination of “dark mode” with the Complainant’s trademark, music from the Complainant’s repertoire and the fluorescent circle centered on the page are more problematic. The Respondent’s Annexes2 document, however, includes evidence showing that the use of the circle device on a black background and in conjunction with some form of bar audio visualiser is, at the least, not uncommon.

Against the purely descriptive applicability of the operate component of the disputed domain names, the Complainant’s (then Mr. Woodford’s) trademark was very well known indeed by September 1, 2013 when the Respondent registered the first disputed domain name. Given the evidence of usage on YouTube in

particular, however, the Panel does not doubt that the expression had at least acquired secondary meaning by September 1, 2013.

At that time, the expression does appear unusual and other expressions – a number of which the Respondent says it considered – may be thought more likely. More importantly, the Respondent admits he was deeply immersed in the underground and copyright “free” music scenes and, even by September 2013, the Complainant (in the guise of its predecessor Mr. Woodford) have built up a very substantial reputation. It is very difficult to accept that the Respondent would not have been aware of the Complainant’s (then Mr. Woodford’s) trademark given his immersion in that scene. It is also important to note that the Respondent does not claim to have undertaken any searches of trademark databases or even in a search engine such as Google to check whether anyone else was already using the expression.

Further complicating the Respondent’s denial of knowledge, the Respondent contends that, when he registered the first disputed domain name to develop a web app, the Complainant had been operating for three years only on social media without any desire to build a web app. This appears to suggest that the Respondent was in fact aware of the Complainant’s YouTube and Facebook channels and proceeded on the basis that there would be no conflict as they were different channels.

The Panel does not set aside the Respondent’s denial of knowledge of the Complainant’s trademark lightly. On balance, however, the Panel finds that the Respondent registered the disputed domain names with knowledge of the Complainant’s (then its predecessor’s Mr. Woodford’s) trademark:

First, the Respondent admits he was deeply immersed in and closely following the underground music scene at the time.

Secondly, by the time the Respondent registered the first disputed domain name, the Complainant (in the guise of its predecessor) had developed a very strong reputation in the expression “NoCopyrightSounds”.

Thirdly, it is very difficult to accept that someone closely following the field would not have been aware of the use of the expression by (at that time) the Complainant’s predecessor. Furthermore, it seems very unlikely that someone working as a developer of web applications with many projects on the go would not have conducted rudimentary Internet searches before settling on the name and should have done so.

Fourthly, as identified above, the Respondent has adopted the same name as the Complainant’s predecessor and a very similar “look” or get-up. A number of elements individually, and even some together, appear to have been well known.

Fifthly, the only tracks included on the Respondent’s website were all tracks controlled by the Complainant. The Respondent does say, and the Complainant appears to accept, that they were sourced from the NewGrounds website. The Respondent also says he trialled some 152 other tracks. Nonetheless, the evidence of his publicly available website through Wayback Machine captures shows only the same eight tracks. And all were the Complainant’s.

Sixthly, so far as the materials available to the Panel disclose, the Respondent adopted all these elements in combination only after becoming aware of the Complainant through the email from Mr. Woodford.

Seventhly, in the exchange of messages in July 2014, the Respondent did say a number of times that the first disputed domain name was not for sale. In his very first response, however, Mr. Okeh bluntly demanded “What’s your offer?” The subsequent, unsolicited email from the Respondent in October 2014 was plainly an attempt to leverage the resemblance of the first disputed domain name to the (by then) Complainant’s trademark.

Accordingly, on the record in this proceeding, the Panel finds that the Respondent registered both disputed domain names with knowledge of the Complainant's (at the time, its predecessor's Mr. Woodford's) trademark and did so at least for the purpose of offering them for sale to the Complainant or to attract users to the Respondent's (proposed) site by mistaking it for the Complainant's.

In the absence of rights or legitimate interests, the operation of such a website, even if only "under construction" in which the disputed domain names contribute to misrepresenting source or affiliation, constitutes use in bad faith. Correspondingly, the attempts to transfer the first disputed domain name for USD 10 or 15 million in the absence of rights or legitimate interests in the disputed domain name constitutes use in bad faith. The Panel accepts that, if the Respondent had rights or legitimate interests in the first disputed domain name, the Respondent would be entitled to seek whatever price it wished. In the absence of rights or legitimate interests, however, that is not the case.

The Respondent can be in no better position in relation to the second disputed domain name. The Respondent does seek to rely on the Complainant's late discovery of the existence of the second disputed domain name to impugn the good faith of the Complainant in bringing the Complaint. While it may be thought somewhat surprising, there is nothing in the record to contradict the Complainant's claim that the Complainant only became aware of the second disputed domain name as a result of the Response.

The Respondent also points out that there are a multitude of variants of the expression "NoCopyrightSounds" which are available to be registered as domain names, including domains in country code Top Level Domains. A very few of these appear to have been registered by third parties.

As the Complainant contends, however, the issue in this proceeding is the registration and use of the two disputed domain names by the Respondent. The proliferation of gTLDs, the large number of country code TLDs and the variety of second Level Domains under those means it is essentially impossible, and at the least economically unfeasible, for a trademark owner to register its trademark, and all possible variations of it, in every domain. The evidence before the Panel does not suggest that use of the expression "no copyright sounds" unconnected with the Complainant is so widespread that it could be considered "generic". Accordingly, this argument does not assist the Respondent either.

The Respondent also refers to its recent registration of the domain name <bobapi.info> in the face of the prior registration of <bobapi.com>. Whether that registration is problematic from the perspective of whomever has registered <bobapi.com> is not an issue before the Panel nor one which the Panel is required to address, let alone resolve.

Accordingly, the Complainant has established all three requirements under the Policy in respect of both disputed domain names.

6. 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, <nocopyrightsounds.com> and <nocopyrightsounds.net>, be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: January 6, 2023