

ADMINISTRATIVE PANEL DECISION

Shoreman's Daughter LLC DBA Glass Eye Studio v. Christian Shevchenko Case No. D2022-4089

1. The Parties

The Complainant is Shoreman's Daughter LLC DBA Glass Eye Studio, United States of America ("United States"), represented by Stokes Lawrence, P.S., United States.

The Respondent is Christian Shevchenko, United States, represented by Seed IP Law Group LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <parisonstudio.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 29, 2022. On November 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 2, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 3, 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 November 8, 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 November 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2022. On November 30, 2022, the Center received an email communication from the Respondent requesting for an extension of time to file a response. On December 1, 2022, the Center granted the Respondent the automatic four calendar day extension for response under paragraph 5(b) of the Rules. The Response was filed with the Center on December 4, 2022.

The Center appointed Evan D. Brown as the sole panelist in this matter on December 8, 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 promotes and distributes hand blown artisan glass and facilitates production and fabrication of artists' creations through the studio process. The Complainant claims to promote its services through the names "Parison Studio", "Glass Eye Studio", and "Idlewild Union Studio", among others. It claims that it owns common law rights to the mark PARISON STUDIO by virtue of its use in connection with the promotion of the Complainant's services and work product of both "Glass Eye Studio" and "Idlewild Union Studio" since 2019.

The Respondent was a member of the Complainant limited liability company from 2017 until September 2022. In the fall of 2022, a business dispute erupted between the Respondent and the other members of the company, evidenced by multiple letters from the Complainant to the Respondent raising a variety of business issues.

According to the Whois records, the disputed domain name was registered on April 20, 2019. The Complainant asserts that it was the previous owner of the disputed domain name and that the Respondent wrongfully took control of the disputed domain name which, according to the Complainant, is an asset of the company.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent disputes the Complainant's claims under each of the three UDRP elements. In particular, on the first element, the Respondent argues that trademark rights in the term PARISON STUDIO, if any, are held solely by the Respondent, and such rights were created with the Complainant's advance knowledge and tacit approval that such rights are independent of the Complainant's business.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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. However, the Panel notes that the history of the Policy indicates its adoption to tackle cases of cybersquatting, leaving other disputes to the courts for resolution, and in the present proceeding, the Panel finds this is a case better suited for court. The Panel notes the conflicting allegations by the Parties as to the rights in the PARISON STUDIO mark, which is a matter that has an impact in the analysis under the first element of the Policy. This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. This element requires the Panel to consider two issues: first, whether the

Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

The Complainant has not demonstrated sufficient evidence to permit the Panel to conclude that it has trademark rights in the mark PARISON STUDIO for the purposes of the Policy.

To establish unregistered or common law trademark rights for purposes of the Policy, the Complainant must show that the PARISON STUDIO mark has become a distinctive identifier which consumers associate with the Complainant's goods and/or services. [WIPO Overview 3.0](#), section 1.3.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. *Id.*

Specific evidence supporting assertions of acquired distinctiveness should be included in the Complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular case, would not normally suffice to show secondary meaning. *Id.*

The Complainant has provided only conclusory and unsupported assertions that it used the mark PARISON STUDIO in connection with its goods or services:

- Though the Complainant relies heavily on a thread of email communications that took place with a prospective customer in 2022 to support use of the mark, the only appearance of the mark within such communications is in the domain name portion of one email address, which was connected to the Respondent (who at the time was still a principal at the Complainant), whereas the signature line from the Respondent only referred to the Complainant's "Glass Eye Studio". Moreover, in annexed emails in the Response exchanged between the Respondent and another principal of the Complainant in October 2021, the Complainant's principal only makes note of their intended continued use of "Glass Eye and Global Village" and "IU", which seemingly corresponded to the principal's signature line that alluded to the Complainant's other project name, "Idlewild Union". Nowhere in the content of either email chain is there the use of or reference to the mark PARISON STUDIO in combination with the provision of services or goods, or the intention to provide such.
- The Complainant asserts that a LinkedIn page was set up in 2019 to promote the services of the Complainant with the PARISON STUDIO mark. But the screenshot the Complainant provided from LinkedIn does not contain the mark or mention the services in connection with which the mark was purportedly used. Further, the Panel notes that the ownership of the LinkedIn page is disputed, seeing as the Respondent claims responsibility for the creation of the page.
- The Complainant further asserts that "beginning in 2021", the Complainant owned a website located at the disputed domain name "which promoted facilitation and production of artists' creations under the name 'Parison Studio'". The Panel consulted The Internet Archive (which, in accordance with the general powers of the Panel, it is permitted to do under the Rules) to see how any web pages appearing at the disputed domain name looked in the past. The only result was a Registrar-provided parked page from December 10, 2021. Further, when evidencing its use of the PARISON STUDIO mark, the Complainant alludes to the annexed capture of the website at the disputed domain name in October 2022, which features website content for which the Respondent claims responsibility. This brings the Complainant's assertions of use into question.

On balance, the Complainant has mustered only scant evidence of use of the PARISON STUDIO mark.

In addition, the Panel notes the Respondent's contentions that should one of the Parties have rights in PARISON STUDIO, such rights should vest in the Respondent. However, the Panel notes that the Respondent itself relies on the same evidence of use of the PARISON STUDIO trademark as relied upon by

the Complainant, pointing to its use of the mark in the evidenced email chain and that the LinkedIn page was created by the Respondent. As discussed above, neither of these provide sufficient evidence to demonstrate common law rights to the PARISON STUDIO mark. The only unique evidence provided by the Respondent concerned the Respondent's formation of the company "EVI Studios LLC" that the Respondent claims (without evidence) operates under the name "Parison Studio". While the website currently featured at the disputed domain name features use of "Parison Studio", there is nothing to suggest that such name has become a source identifier for the Respondent or its EVI Studios LLC. Moreover, the Panel notes that the website identifies "parison" as a dictionary term in the glass-making industry, which the Panel has corroborated via a simple Internet search exercised under its general powers pursuant to paragraph 10 of the Rules.

Lastly, the Panel notes that among the evidence exhibited in the Complaint are letters to the Respondent concerning its alleged infringement or violation of a "No-Hire and Trade Secrets obligation under the Operating Agreement". The Panel notes that no "Operating Agreement" has been furnished, which may materially impact either Parties' assertion of rights to PARISON STUDIO.

Considering the features of the claims, the evidence submitted, the relationship between the Parties, and that the record contains conflicting statements in a case that would benefit from discovery, and cross-examination, the Panel considers that the nature of this dispute may be closer to a dispute on contractual matters for which courts may be better suited. The Panel finds the Parties dispute is not a matter within the specific scope of cybersquatting for which the Policy was designed to engage.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: December 22, 2022