

## **ADMINISTRATIVE PANEL DECISION**

Creative Innovations Design Group, LLC v. Qian09 Zhang  
Case No. D2022-4178

### **1. The Parties**

Complainant is Creative Innovations Design Group, LLC, United States of America (“U.S.A.” or “U.S.” or “United States”), represented by The Webb Law Firm, U.S.A.

Respondent is Qian09 Zhang, China.

### **2. The Domain Name and Registrar**

The disputed domain name <postmortemsale.com> (the “Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2022. On November 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on November 7, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on November 8, 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 Respondent of the Complaint, and the proceedings commenced on November 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 28, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 29, 2022.

The Center appointed Clive L. Elliott, K.C., as the sole panelist in this matter on December 1, 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**

Complainant is the owner of the trade mark POST MORTEM HORROR BOOTIQUE (“Complainant’s Mark”), registered in the U.S. on May 11, 2021 under registration No. 6345820.

Complainant, through its subsidiary Mortem Manor Haunted Attraction, owns and operates a retail store called “Post Mortem Horror Boo-Tique” (“Complainant’s Shop”) located in Kissimmee, Florida, U.S. In connection with Complainant’s Shop, Complainant also owns and operates the retail website at “www.shopmortem.com” (“Complainant’s Retail Site”). Both Complainant’s Shop and Complainant’s Retail Site are operated in connection with its subsidiary.

According to the publicly available Whois the Domain Name was registered on August 18, 2022. The Domain Name resolves to a website that displays Complainant’s Mark and uses Complainant’s images, logos and products (“Respondent Website”).

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant states that the Domain Name is confusingly similar to Complainant’s Mark as it contains the dominant portion of Complainant’s Mark in the Domain Name, *i.e.*, “Post Mortem”. Complainant considers that the fact that the Domain Name does not incorporate the words “Horror Bootique” is inconsequential because as well as the words “Post Mortem” being the dominant portion of the mark, the website located at the Domain Name incorporates the full Complainant’s Mark in both word and the stylized version. Further Complainant contends that the inclusion of the word “sale” in the Domain Name is merely descriptive of its retail services.

Complainant asserts that Respondent is copying images, logos and products of Complainant to create an imposter website where Respondent can collect customer information and payments in a phishing scheme.

##### **B. Respondent**

Respondent did not reply to Complainant’s contentions.

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

Complainant is the owner of United States trade mark registration No. 6345820 POST MORTEM HORROR BOOTIQUE (Complainant’s Mark). The said mark was registered on May 11, 2021, before the registration of the Domain Name.

The Domain Name reproduces part of Complainant’s Mark, namely “POST MORTEM”. Complainant argues the fact that the Domain Name does not incorporate the words “Horror Bootique” is of no consequence because the words “Post Mortem” are the dominant portion of the mark and that the inclusion of the word “sale” is merely descriptive of its retail services. The addition of the word “sale” does not, in and of itself, prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on

Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Further, Complainant's Mark is recognizable in the Domain Name. See section 1.7 of the [WIPO Overview 3.0](#). Moreover, Respondent's Website uses Complainant's Mark which confirms that Respondent seeks to target Complainant's Mark through the Domain Name. See section 1.15 of the [WIPO Overview 3.0](#).

The Domain Name is therefore confusingly similar to Complainant's Mark. The first ground under the Policy is made out.

## **B. Rights or Legitimate Interests**

Complainant contends that Respondent is using the Domain Name in an improper manner, first, by operating or being associated in some way with a website located at the Domain Name, that incorporates in full Complainant's Mark. Complainant alleges that such use is of both the word and stylised version of Complainant's Mark. Further, Complainant alleges that Respondent has set up what it describes as an "imposter website" using Complainant's images, logos and products ("indicia"). This suggests that Respondent is using the Domain Name to mislead consumers. This is inconsistent with it having any rights or legitimate interests in the Domain Name. Further, Complainant has provided evidence showing that customers purchased products from Respondent's Website because they thought it was Complainant's Retail Site.

Complainant's allegations are serious and call for a response, but Respondent has chosen to remain silent. In the absence of any response, the Panel finds that Respondent's activities do not constitute a *bona fide* offering of good and/or services.

The Panel infers that Respondent's Website is being used for improper purposes and that in the present circumstances it does not represent a *bona fide* offering of goods and/or services or any other legitimate use or interest in the Domain Name.

Accordingly, the second ground under the Policy is made out.

## **C. Registered and Used in Bad Faith**

For the reasons discussed above, the Panel's view is that the Domain Name has been registered and is being used in bad faith. Again, absent any attempt to refute Complainant's allegations, the fact that Complainant's Mark was registered prior to registration of the Domain Name, and the Domain Name is confusingly similar to Complainant's Mark and finally that Respondent is using Complainant's indicia on Respondent's Website and is offering for sale similar products, the Panel finds that the Domain Name was registered and is being used in bad faith pursuant paragraph 4(b)(iv) of the Policy.

Complainant has therefore established the third ground under the Policy.

## **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 Domain Name <postmortemsale.com> be transferred to Complainant.

/Clive L. Elliott, K.C./

**Clive L. Elliott, K.C.**

Sole Panelist

Date: December 21, 2022