

ADMINISTRATIVE PANEL DECISION

Pippa Malmgren v. Wayne Paul Harburn, DRPM Group Limited
Case No. D2022-4605

1. The Parties

The Complainant is Pippa Malmgren, United Kingdom, represented by Newman Du Wors LLP, United States of America (“United States”).

The Respondent is Wayne Paul Harburn, DRPM Group Limited, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <pippamalmgren.com> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 1, 2022. On December 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that included additional information beyond that included in the Complaint. The Center sent an email communication to the Complainant with the additional registrant and contact information on December 9, 2022. The Complainant filed an amended Complaint on December 14, 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 December 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 10, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on January 16, 2023. 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 February 2, 2023, the Panel issued Procedural Order No. 1 (the “Procedural Order”) in which it invited the Complainant (i) to provide any evidence supporting her allegation that the Respondent had access to her account information and changed the registration of the disputed domain name, without her permission, to himself; (ii) to address the timing of the alleged change of registration of the disputed domain name; and (iii) to address whether and why the change of registration of the disputed domain name would have included a change of the registrant organization name to “DRPM Group Limited”. The original due date for the Complainant’s response to the Procedural Order was February 5, 2023 and the Respondent was permitted to reply by February 8, 2023. On February 7, 2023 the Complainant requested an extension of time to respond to the Procedural Order until February 10, 2023 due to her work and travel schedule. The Panel agreed to extend the due date for the Complainant’s response to the Procedural Order to February 10, 2023, the due date for the Respondent’s reply to February 13, 2023, and the due date for the Decision to February 20, 2023. The Complainant filed a response to the Procedural Order on February 10, 2023. The Respondent did not comment.

4. Factual Background

The Complainant is an economist who provides educational lectures and speeches on economics. She filed United States trademark application number 90153011 for PIPPA MALMGREN on September 2, 2020, specifying certain services in class 41. That trademark application is currently pending.

The Respondent is listed in the Registrar’s Whols database as “Wayne Harburn”, an individual, and “DRPM Group Limited”, an organization. According to the Complainant, “DRPM Group Limited” was the name of the business that she and Mr. Harburn operated. The Panel can find no record of a company of that name in the United Kingdom Companies House database, but online searches of that database show that the Complainant and Mr. Harburn were directors and persons with significant control of two companies named “DRPM Group (Holdings) Limited” and its subsidiary “DRPM Consulting Limited”, both incorporated on January 31, 2014. These companies’ registered offices at the time of their incorporation were at the same address as the contact address for the disputed domain name. Mr. Harburn was their Chief Executive Officer (“CEO”) and the Complainant was a consultant. The Complainant resigned from her directorships in both companies on September 16, 2020. A winding-up order was made against DRPM Group (Holdings) Limited on May 14, 2021, in a matter brought by the Complainant against that company and Mr. Harburn. See High Court of Justice Business & Property Courts of England and Wales, in the matter of *DRPM Group (Holdings) Limited* and in the matter of *the Insolvency Act 1986*, CR-2020-003984. DRPM Consulting Limited was dissolved on November 30, 2021.¹

The disputed domain name was created on April 13, 2006. According to screenshots in the Internet Archive, the disputed domain name resolved from 2011 to 2013 to the Complainant’s personal website and from 2014 to 2020 to DRPM Group’s website. The latter promoted the Complainant’s public speaking services and books. On the About Us tab, it introduced DRPM, the Complainant as its founder, and Mr. Harburn as its CEO. Copyright notices on the website referred to DRPM Group or DRPM Group (Holdings) Limited. At the time of this proceeding, the disputed domain name resolves to a page displaying an index of error codes last modified on May 26, 2021.²

¹ The Panel notes its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules and has searched the publicly available United Kingdom Companies House database at “www.gov.uk” in order to establish the identity of the Registrar-verified registrant organization and to verify allegations in the Complaint regarding its current status and relationships with the other Parties. The Panel considers this process of identification and verification useful in assessing the merits of the dispute and reaching a decision. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8.

² For the reasons given in the previous footnote, the Panel has searched the publicly available Internet Archive at “www.archive.org” as well as the webpage associated with the disputed domain name in order to verify the allegation in the Complaint regarding the use of the disputed domain name. The Panel considers this process of verification useful in assessing the merits of the dispute and reaching a decision.

5. Parties' Contentions

A. Complainant

The Complainant owns United States trademark serial number 90153011 for the word mark PIPPA MALMGREN in the field of educational services. The Complainant uses the PIPPA MALMGREN mark on all her products and services. The Complainant is known throughout the world as authenticating educational programs, books, and other materials as authorized by her and reflecting her unique take on education and economics. The disputed domain name is identical to the Complainant's PIPPA MALMGREN mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant and Mr. Harburn were partners in two businesses: DRPM Group and H Robotics, both founded in 2014. The Complainant's domain name was used to promote her and never to promote Mr. Harburn. DRPM Group and H Robotics are no longer in operation and the Complainant's professional relationship with Mr. Harburn has terminated. The Complainant originally registered the disputed domain name in 2006 through one of her companies, Canonbury Securities. Mr. Harburn had access to the Complainant's account information and password and without her permission changed the registration to himself. The Complainant was not aware of the change until the Parties ended their business relationship. Mr. Harburn was never authorized to register the disputed domain name in his own name. Despite repeated requests, Mr. Harburn refused to transfer the disputed domain name to the Complainant. The Complainant no longer has a means of contacting Mr. Harburn. To the Complainant's knowledge, the disputed domain name has never been used. Mr. Harburn has no current affiliation with the Complainant. He is not authorized to use her name in any capacity.

The disputed domain name was registered and is being used in bad faith. Mr. Harburn has no legitimate interests in the disputed domain name other than to use it as leverage in business negotiations with the Complainant, or otherwise to cause harm. The Respondent transferred the disputed domain name to himself to disrupt the Complainant's business.

In response to the Procedural Order, the Complainant states that the Respondent Mr. Harburn was a former business partner of hers. He was responsible for managing the business side of her consulting and public speaking work, and as such had access to the account passwords for the disputed domain name. There is no particular documentary evidence supporting that he had this access; the fact that the disputed domain name is the Complainant's legal name and that he registered it bolsters the Complainant's statement. The Complainant does not know when the Respondent Mr. Harburn made the change, but the Complainant never authorized him to register the disputed domain name to himself. It should always have been registered to the Complainant. Once their business partnership dissolved, the Complainant asked the Respondent Mr. Harburn to transfer the disputed domain name to her once she discovered that she was unable to access it and he refused. DRPM Group Limited was the name of the business that the Complainant and the Respondent Mr. Harburn operated. The disputed domain name was never transferred to the business; it consists of the Complainant's legal name and the Complainant has always owned the disputed domain name. DRPM Group managed her engagements and accordingly had access to it but was never the owner and was never entitled to appropriate it.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

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

The burden of proof of each element is borne by the Complainant. The Respondent's default does not automatically result in a finding in favor of the Complainant. See [WIPO Overview 3.0](#), section 4.3.

A. Identical or Confusingly Similar

The Complainant submits evidence of a trademark application that she has filed for her personal name, PIPPA MALMGREN, specifying "educational services, namely, conducting informal on-line programs in the fields of personal improvement, financial improvement, economic improvement, and sales training, and printable materials distributed therewith" in class 41. However, as that application is pending and has not proceeded to grant, it does not by itself create rights in a trademark or service mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.1.4.

The Complainant also claims to have used the PIPPA MALMGREN mark on all her products and services. The Panel notes that where the Complainant's personal name is being used like a trademark, the Complainant may be able to establish unregistered or common law rights in that name for the purpose of standing under the UDRP, provided that her name is being used in commerce as a distinctive identifier of her goods or services. However, merely having a famous name or making broad unsupported assertions regarding the use of such name in trade or commerce would be unlikely to demonstrate unregistered or common law rights for this purpose. See [WIPO Overview 3.0](#), section 1.5.

In the present case, the Complainant lists her educational and employment achievements, including prior roles as an advisor on economic policy to the United States government, a doctorate, four memberships, two current advisory roles, and a fellowship. She also lists the titles of four books that she has written, including two that won awards. In the Panel's view, this type of information does not indicate that the Complainant's personal name functions as a trademark in the sense of a distinctive identifier of goods or services. In the case of the books, her name identifies herself as their author rather than their trade origin. The Complainant also asserts that she regularly appears at universities, conventions, industry groups, major corporations, and many others; that she is frequently invited to comment on radio, television and at other media outlets; and that she also publishes online courses on economics that have attracted "thousands of views". The Panel notes that these assertions lack detail and are unsupported by evidence. There is no evidence regarding any informal online programs. In sum, these allegations do not demonstrate that the Complainant's personal name has acquired distinctiveness or secondary meaning that consumers associate with goods and services. On the other hand, the Panel notes that the Complainant's personal name has been used to promote her public speaking services, including through websites associated with the disputed domain name, which indicates that it has been used as an identifier of the source of those services.

Given the findings below regarding the scope of the Policy, it is unnecessary for the Panel to reach a definitive view on the existence and ownership of any unregistered or common law rights in a PIPPA MALMGREN mark. The Panel will accept *arguendo* that the Complainant has acquired unregistered or common law rights in such a mark.

The disputed domain name wholly incorporates the Complainant's alleged PIPPA MALMGREN mark. Its only additional element is a generic Top-Level Domain extension (".com") which, as a standard requirement of domain name registration, may be disregarded for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel accepts *arguendo* that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy and has standing to bring the Complaint.

B. Rights or Legitimate Interests

Given the Panel's findings below, it is unnecessary for the Panel to consider the second element in paragraph 4(a) of the Policy.

C. Bad Faith and the Scope of the Policy

The third element of paragraph 4(a) of the Policy requires the Complainant to show that the disputed domain name was both registered in bad faith and is being used in bad faith. Bad faith is assessed in relation to registration as at the time when the current registrant acquired the disputed domain name. The Panel accepts that the Respondent was not the original registrant in 2006 as DRPM Group (Holdings) Limited was not incorporated until 2014.

The Complainant alleges that the Respondent Mr. Harburn changed the registration of the disputed domain name to himself without permission and that he was never authorized to register the disputed domain name in his own name. In response to the Procedural Order, the Complainant maintains that the disputed domain name was never transferred to DRPM Group Limited. The Panel is unable to accept these allegations because the Registrar has verified that the registration is indeed in the name of DRPM Group Limited, as the registrant organization, as well as the name of Mr. Harburn, who was its CEO.

The Panel notes that the Respondent used the disputed domain name in connection with a website promoting the Complainant's services for six years with the Complainant's apparent consent. Although the Complainant discovered that the account password had been changed after the Parties' business relationship terminated, that in itself does not imply that any change in the registrant name and contact details occurred at the same time. The Complainant does not know when the Respondent acquired the disputed domain name. On this record, it is plausible that the registration was in the Respondent's name throughout the Parties' collaboration since as early as 2014. In view of these circumstances, this is not a typical case of abusive cybersquatting.

The Complainant submits that the Respondent was never entitled to appropriate the disputed domain name and emphasizes that the disputed domain name incorporates her personal name. This submission raises issues regarding the internal management of the Complainant's former company, which was created for the purpose of promoting her public speaking services, and the ownership of the assets used in its business. These are complex questions that the Panel is ill-equipped to resolve based on the very limited record of this dispute, where the Panel does not have the benefit of witness testimony, disclosure of documents, or the other appropriate instruments that are typically available to assist a court to resolve such a dispute.

For the above reasons, the Panel denies the Complaint, not on the merits, but on the broader ground that this dispute exceeds the relatively limited "cybersquatting" scope of the UDRP, and would be more appropriately addressed by a court of competent jurisdiction. See [WIPO Overview 3.0](#), section 4.14.6.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: February 14, 2023