

ADMINISTRATIVE PANEL DECISION

Shahryar Oveissi v. Michael Benjamin, BIREG LLC

Case No. D2023-0256

1. The Parties

The Complainant is Shahryar Oveissi, United States of America (“United States”), represented by Jeffrey Smith, United States.

The Respondent is Michael Benjamin, BIREG LLC, United States, self-represented.

2. The Domain Names and Registrar

The disputed domain names <shahryaroveissi.net>, <shahryaroveissi.org>, and <oveissicrimefamily.com> are all registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 19, 2023. On January 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 23, 2023, 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 (DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 2023, 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 January 27, 2023.

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 January 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 20, 2023. Following this notification, the Respondent sent an informal communication email on February 23, 2023.

In the interim, the Complainant sent a communication by email to the Center dated February 13, 2023, requesting permission to amend the Complaint to add a third disputed domain name, <oveissicrimefamily.com>. This disputed domain name was not included in the original Complaint but was allegedly registered by the same Respondent. The Center informed the Complainant that such amendment would be at the discretion of the Panel.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on March 1, 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 March 22, 2023, the Center issued Panel Administrative Order Number 1, accepting the amended Complaint adding the third disputed domain name, and (a) inviting the Complainant to submit additional evidence supporting its claimed common law mark, (b) inviting the Respondent to file a formal Response to the amended Complaint, with the requisite certification of completeness and accuracy, and (c) setting a new schedule for filings and decision.

In the absence of any additional filing from the Complainant, the Center issued Panel Administrative Order Number 2 on April 13, 2023, setting a schedule for the Response and decision. The Respondent filed a Response on April 28, 2023.

4. Factual Background

The Complainant, Shahryar Oveissi, is an individual residing in the United States. The Complainant is the son of the former Shah of Iran's Imperial Army, who was assassinated in Paris in 1984. The Complainant was raised in the United States and became a successful entrepreneur and philanthropist, investing in a number of startups and serving on the boards of numerous companies and organizations. The Complainant is currently Co-Founder and Chief Carbon Officer of Argali Carbon Corporation and Co-Founder and General Partner of Argali Climate Fund.

The Complainant claims common law protection for his name SHAHRYAR OVEISSI as a result of using it in connection with his business and philanthropic services for many years. The Complainant also applied to the United States Patent and Trademark Office ("USPTO") on November 17, 2022, to register his name as a standard character service mark, as "an author producing and publishing my own digital material books and images". The application was filed on an intent-to-use basis (Serial Number 97681883). That application is pending at the time of this Decision.

The Complainant operates a website at "www.shahryaroveissi.com" (the "Complainant's website"). It appears from the Whois database that this domain name was created in March 2022. The Complainant's website is headed with the Complainant's name and comprises several pages including information about the Complainant as an entrepreneur and as a philanthropist, as well as a blog and a page with media links such as YouTube videos of interviews with the Complainant. The Complainant's website currently displays the SM symbol following the Complainant's name, as an assertion of common law rights or a pending application to register a service mark. The Panel notes that screenshots from the Internet Archive's Wayback Machine show that this symbol was not displayed on the Complainant's website as late as August 2022.

The Complainant offers no examples of the trademark use of his name apart from what is found on the Complainant's website. The website does not expressly advertise the Complainant's interest in investing in new projects or his availability to provide consulting services, although these might be inferred from text such as the following on the "My Story" page of the website:

"I am a born entrepreneur and over the last 15 years having spent the majority of my career helping advise and raise capital for specific companies and transactions. Over the last few years I have begun focusing on being a principal investor and leading investments on behalf of investors who have found trust in my vision and foresight in finding great up and coming companies in the renewable power, cryptocurrency/blockchain, healthcare and biotech sectors."

The disputed domain names <shahryaroveissi.net> and <shahryaroveissi.org> were both registered in October 2022, in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Michael Benjamin and the organization as BIREG LLC, listing a postal address in New York, New York, United States. The Registrar reports that the third disputed domain name, <oveissicrimefamily.com>, was registered on February 26, 2023, by the same Respondent.

The disputed domain names <shahryaroveissi.net> and <shahryaroveissi.org> redirect to a website at "www.thebutcheroftehran.org" headed "General Gholam Ali Oveissi 'The Butcher of Tehran'" (the "Respondent's website"). The Respondent's website is copyrighted in the name of "The Mahin Project", showing a postal address in Los Angeles, California, United States. The website content concerns the general's role in the Iranian revolution in 1978-1979 and his subsequent flight from Iran, allegedly with a large fortune. The website also attacks the Complainant as the supposed heir to that fortune and emphasizes the Complainant's luxurious lifestyle. There is no commercial advertising on the Respondent's website or evident commercial purpose. The Respondent's website includes source documentation and publishes the text of the Complainant's reply to requests for an interview or a response to the Respondent's accusations.

The Mahin Project has a website at "www.themahinproject.org" that is largely undeveloped but states its purpose as follows (in English and Farsi):

"The Mahin Project is a non-profit organization dedicated to exposing corruption in the Iranian government (past and present).

Founded by Iranian Americans in November 2018 as a discussion group, we've evolved into a membership organization that takes action.

We seek to hold corrupt government officials and their beneficiaries accountable for their crimes against the Iranian people."

The third disputed domain name, <oveissicrimefamily.com>, resolves to a landing page with the same typeface found on the Respondent's website. It is similarly copyrighted in the name of "The Mahin Project". However, this landing page displays no content other than a "Coming Soon" message.

5. Parties' Contentions

A. Complainant

The Complainant asserts common law protection for his name as a service mark, referring to the Complainant's website for details of his career:

"[The Complainant], having used his name for his business and philanthropic work for over 25 years, and with business dealings with hundreds of companies, and with board positions on numerous charities such as YMCA, United Way and American Red Cross, is a well-known leader and a businessman operating as Shahryar Oveissi. More information about Complainant is available at <https://www.shahryaroveissi.com>. [...]

As a result of continuous and significant use of his name for decades in business and philanthropy, both online and in person, [the] Complainant has also established strong common law rights to the name SHAHRYAR OVEISSI throughout the United States and elsewhere.”

The Complainant observes that the first two disputed domain names consist entirely of his name, which does not correspond to the Respondent’s name, and the Complainant states that he has not given the Respondent permission “to use any version of [the] Complainant’s name for any purpose”. Instead, “[the] Respondent is using [the disputed domain names] to divert and redirect Internet users to a third party website that spreads false and malicious lies about [the] Complainant and his business dealings, his philanthropic work and his family.”

The Complainant asserts that “the Respondent contacted [the] Complainant on September 9, October 31, and November 2, 2022, requesting an interview, threatening to release the fallacious ‘report’ publicly if [the]Complainant didn’t comply with the request”. According to the Complainant, the Respondent registered the disputed domain names and published the Respondent’s website with defamatory content “after [the] Complainant politely rejected a request for investment into one of Respondent’s companies”.

The Complainant infers from this conduct that the Respondent registered the disputed domain names with the intent to sell them to the Complainant for an excessive price, to deprive the Complainant of domain names corresponding to his mark, to disrupt the Complainant’s business, and to misdirect Internet users to a competing website, in line with the example of bad faith cited in the Policy, paragraph 4(b).

B. Respondent

The Respondent sent informal communications to the Center, but in Panel Administrative Order Number 2, the Panel invited the Respondent to submit a Response with the required certificate of completeness and accuracy in response to the amended Complaint.

In that Response (which does not refer to the organization BIREG LLC), the Respondent states that he published the first installment of a projected multi-part investigative report about General Oveissi in November 2022 on the Respondent’s website, linking source materials and providing “a thoroughly-referenced, evidence-based profile of General Oveissi”. Part One of the report also recounts “details about the beneficiaries of General Oveissi’s ill-gotten gains,” focusing on the Complainant. The first two disputed domain names, <shahryaroveissi.net> and <shahryaroveissi.org>, were meant to be used in connection with Part One of the report, which addresses the activities of the General and his son, the Complainant. The third disputed domain name, <oveissicrimefamily.com>, is meant to “support” Part Two of the report when it is released and covers other family members and associates. The Respondent states that the three disputed domain names were registered because “they were relevant to the content of the Report and may be useful in directing people to relevant sections”.

The Respondent argues that there is no similarity between the Respondent’s website and the Complainant’s and no likelihood of confusion. The Respondent also claims nominative fair use of the disputed domain names and argues that they were registered and have been used only for noncommercial purposes, for news reporting and news commentary and that there “has been no attempt to sell, rent or otherwise transfer the domain names to anybody”.

The Respondent points out that the Complainant’s trademark application was made after the first installment of the Respondent’s report was published and after the first two disputed domain names were registered. The Respondent questions the validity of the Complainant’s common-law trademark claims, noting that they are only recently asserted and that the Complaint argues that they are based on his services in business and philanthropy, while the pending trademark application refers only to digital publications. Moreover, the third disputed domain name, <oveissicrimefamily.com>, does not correspond to the Complainant’s full name claimed as a trademark.

The Respondent argues for legitimate interests in the disputed domain names and denies bad faith:

“The disputed domain names are being used for noncommercial, fair use purposes. They were registered to support not-for-profit reporting, commentary, and criticism. The Report is not monetized in any way. The websites contain no ads, solicitations for money or links to commercial sites (except as sources and references). There has been no attempt to sell, rent or otherwise transfer the domain names to anybody.”

The Respondent emphasizes that he cites sources for the facts recounted in the report published on the Respondent’s website and gave the Complainant “multiple” opportunities to respond. The Respondent states that he never attempted to sell the disputed domain names or direct them to other websites for commercial gain and observes that the Respondent and the Complainant “are not competitors”.

As the Complainant offers no evidence in support of the Complainant’s assertions of bad faith, the Respondent contends that “these false and malicious statements constitute a violation of the Complainant’s Certification” and represent an attempt at Reverse Domain Name Hijacking, simply trying to “shut down speech that the Complainant finds unfavorable”.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the 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 domain name; and (iii) the domain name has been registered and is being used in bad faith. Under paragraph 15(a) of the Rules, “[a] Panel shall decide a 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 Complainant relies on claimed common law rights in his own name, Shahryar Oveissi, as an unregistered service mark.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.3, summarizes panel decisions on the question, “What does a complainant need to show to successfully assert unregistered or common law trademark rights?”:

“To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services.

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.

(Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant’s goods and/or services.)

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 UDRP case, would not normally suffice to show secondary meaning.”

[WIPO Overview 3.0](#), section 1.5 summarizes cases where, as here, the unregistered mark is the complainant's personal name:

“The UDRP does not explicitly provide standing for personal names which are not registered or otherwise protected as trademarks. In situations however where a personal name is being used as a trademark-like identifier in trade or commerce, the complainant may be able to establish unregistered or common law rights in that name for purposes of standing to file a UDRP case where the name in question is used in commerce as a distinctive identifier of the complainant's goods or services.

Merely having a famous name (such as a businessperson or cultural leader who has not demonstrated use of their personal name in a trademark/source-identifying sense), or making broad unsupported assertions regarding the use of such name in trade or commerce, would not likely demonstrate unregistered or common law rights for purposes of standing to file a UDRP complaint.”

For example, the complainant in *Dr. Michael Crichton v. In Stealth Mode*, WIPO Case No. [D2002-0874](#), successfully claimed common law trademark rights in his name as the author of numerous, well-known, published novels and screenplays from 1969 through the time of the decision in 2002.

By contrast, the complainant in *Victor Topa v. Whoisguard Protected / “Victor Topa”*, WIPO Case No. [D2015-2209](#), failed to establish that his name had acquired secondary meaning as an unregistered trademark or service mark. The complainant in *Victor Topa* worked professionally as a consultant in the civil aviation industry. He claimed to be well known in this industry, having conducted business in the sector “for many years”. However, the complainant offered evidence of only two consulting contracts where his name appeared, each time in connection with his role with another company. The panel found that these contracts “did not sufficiently prove that Complainant's personal name acquired ‘secondary meaning’ in the civil aviation industry.” The complainant's own website described his expertise and positions but did not expressly describe or solicit consulting business. As in the present proceeding, the panel in *Victor Topa* issued a panel order seeking evidence of unregistered trademark use of his name, but the one additional document furnished by the complainant in that proceeding was inconclusive. The panel noted that the complainant offered no evidence of advertising, sales, or third-party recognition of the complainant's name in a trademark sense.

The Complaint and Amended Complaint in the current proceeding are similarly lacking. The Complainant has clearly made investments and held positions as a board member and officer of a variety of enterprises and nonprofit organizations. However, there is no indication that any of these have been branded with his name. The Complainant applied in November 2022 to register his name as a service mark in the United States as “an author producing and publishing my own digital material books and images”, but that application was filed on an “intent-to-use” basis and is still pending at the time of this Decision, without a declaration of use. The Complainant points to his website, which was created only in 2022. As recounted in the Factual Background section above, the Complainant's website publicizes the Complainant's history and philanthropical activities and posts his video interviews, but it does not expressly advertise any consulting or investment services that the Complainant offers to perform for clients. The Complaint does not include evidence of advertising or sales or third-party recognition of the Complainant's name in a trademark sense. In Panel Administrative Order Number 1, the Panel sought evidence to support the claim of unregistered trademark rights, but the Complainant did not provide any.

The Panel finds insufficient evidence to support the Complainant's claimed rights to an unregistered service mark and concludes that the Complainant has not established the first element of the Complaint.

B. Rights or Legitimate Interests

In light of the Panel's conclusion on the first element of the Complaint, it is unnecessary to address this issue.

C. Registered and Used in Bad Faith

In light of the Panel's conclusion on the first element of the Complaint, it is unnecessary to address this issue.

7. Reverse Domain Name Hijacking

Paragraph 15(e) of the UDRP Rules provides that, if “after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking (‘RDNH’) or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”. The Respondent has requested such a finding here.

Reverse Domain Name Hijacking is defined under the UDRP Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”. Mere lack of success of a complaint is not sufficient to find RDNH. See [WIPO Overview 3.0](#), section 4.16. A finding of RDNH is warranted, for example, when a panel finds that the complainant (especially one represented by counsel, as in this proceeding) should have recognized that it could not succeed on one of the three elements of the complaint under any fair interpretation of the available facts or brings a complaint based “on only the barest of allegations without any supporting evidence” (*id.*).

Here, the Complaint is manifestly deficient, despite the Complainant having been given an opportunity to provide evidence to support the claim of common law trademark rights in the Complainant's personal name. The [WIPO Overview 3.0](#) provides very specific guidance in such cases, as cited above. The Complainant filed its trademark application after this dispute arose, and for a different activity (digital publications, on an intent-to-use basis) than the service claimed in the Complaint (ill-defined business and philanthropical activities).

The Panel finds that the Complainant brought the Complaint in bad faith, within the meaning of Rule 15(e), in an attempt at RDNH. The Complainant may feel that his reputation and that of his family have been unfairly impugned, but the UDRP is not the proper forum to resolve such issues. The Complainant should not have pursued a remedy designed only to protect trademark rights when he was unable to prove that he has such rights and that they were under attack.

8. Decision

For the foregoing reasons, the Complaint is denied.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: May 9, 2023