

## **ADMINISTRATIVE PANEL DECISION**

Clear Channel Outdoor Holdings, Inc. and Clear Channel IP, LLC v. Manlidy, GNN

Case No. D2023-1788

### **1. The Parties**

The Complainants are Clear Channel Outdoor Holdings, Inc. and Clear Channel IP, LLC, United States of America (“United States” or “US”) collectively referred to as “the Complainants”, represented by Schwegman Lundberg & Woessner, P.A., United States.

The Respondent is Manlidy, GNN, Singapore.

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

The disputed domain name <clearchannell.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2023. On April 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 22, 2023, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 4, 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 May 10, 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 May 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 30, 2023.

The Center appointed Zoltán Takács as the sole panelist in this matter on July 4, 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.

#### **4. Factual Background**

The First Complainant – Clear Channel Outdoor Holdings, Inc. - is one of the world's largest outdoor advertising companies with over 450.000 displays located in 31 countries across Asia, Europe, Latin America and North America.

The Second Complainant – Clear Channel, LLC – is the wholly owned subsidiary of the First Complainant and owner of the various intellectual property rights of the group company, which among others include the US Trademark Registration No. 2882210 and the European Union Trademark Registration (“EUTM”) No. 000911842 registered on September 7, 2004, and December 21, 1999, respectively for the word mark CLEAR CHANNEL in connection with services of classes 35, 38 and 41 of the Nice Agreement Concerning the International Classification of Good and Services for the Purposes of the Registration of Marks.

The Second Complainant also owns the domain name <clearchannel.com>, which was registered on May 21, 1996, and resolves to the Complainants' website “www.clearchanneloutdoor.com”.

The First Complainant is the exclusive licensee of the intellectual property rights held by the Second Complainant.

The disputed domain name was registered on March 5, 2023, and resolved to a website that contained graphic pornographic content.

#### **5. Parties' Contentions**

##### **A. Complainants**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that:

- the disputed domain name that fully incorporates the trademark is confusingly similar to it, because the mere addition of an extra letter “l” to the trademark does not sufficiently distinguish the disputed domain name from the trademark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy, and
- the Respondent's registration of the disputed domain name and diversion of unsuspecting users to its pornography site amounts to bad faith.

The Complainants request that the disputed domain name be transferred from the Respondent to the Second Complainant.

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

The Respondent did not reply to the Complainants' contentions.

## 6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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 complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

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

### 6.1 Procedural Matter – Multiple Complainants

In the present case two Complainants brought a single complaint against a common Respondent.

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes.

According to section 4.11.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation".

The proprietor of the CLEAR CHANNEL trademark and other intellectual property rights is the Second Complainant. The First Complainant is the parent company of the Second Complainant and exclusive licensee of among others the CLEAR CHANNEL trademark and other intellectual property rights held by the Second Complainant.

The Respondent's incorporation of the CLEAR CHANNEL trademark in the disputed domain name clearly affects both Complainants rights, who therefore have common interest in the disputed domain name and common grievance against the Respondent.

The above facts and circumstances in view of Panel warrant permitting consolidation in this proceeding as a procedurally equitable and efficient action.

### 6.2 Substantive Matters

#### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the

disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Complainants produced evidence of having registered rights in the CLEAR CHANNEL trademark by virtue of the registrations listed above, which satisfy the requirement of having trademark rights for the purpose of the Policy.

The CLEAR CHANNEL trademark is fully incorporated into and readily recognizable in the disputed domain name. The only difference between the trademark and the disputed domain name is the addition of another letter “l” to the trademark in the disputed domain name. The Panel considers this obvious misspelling of the Complainant’s trademark a clear example of typosquatting.

According to section 1.9 of the [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by UDRP panels to be confusingly similar to the relevant mark for the purposes of the first element.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain (“TLD”) in a domain name (in this case “.com”) is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainants’ trademark and that the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

The Complainants have submitted sufficient and uncontested evidence of having registered rights in the CLEAR CHANNEL trademark and stated to have never authorized the Respondent to use the trademark in a domain name or otherwise.

There is no evidence that the Respondent is commonly known by the disputed domain name.

Prior to filing of the Complaint the disputed domain name resolved to a website with graphic pornographic content. Therefore, there is no evidence that the Respondent has prior to any notice of this dispute used or made demonstrable preparations to use the disputed domain name in connection with a legitimate or *bona fide* offering of goods and services or it is making legitimate noncommercial or fair use of the disputed domain name.

The Respondent failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter to the Complainants' *prima facie* case.

Based on the available record, the Panel finds that the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the composition of the disputed domain name, and finds that in the circumstances of this case the current passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Complainants' have been using their CLEAR CHANNEL trademark in Singapore, the Respondent's apparent domicile for over two decades. The Respondent has incorporated the misspelled variant of the Complainants' trademark in the disputed domain name, hence it is implausible to presume that the Respondent choose to incorporate it in the disputed domain name for any other reason than to create a false

impression of an association with the Complainants and trade off of the goodwill the Complainants have established in the CLEAR CHANNEL trademark. This qualifies as bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Furthermore, for the reasons discussed above the Panel considers the Respondent's obvious misspelling of the Complainants' trademark in the disputed domain name a clear case of typosquatting registration which is in itself evidence of bad faith (see *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#)).

Last but not least, a finding of bad faith is supported by the fact that the disputed domain name was used to resolve to a website at which graphic pornographic content was offered, most likely for the Respondent's commercial gain. Previous UDRP panels have held that linking of the disputed domain name with a pornographic website might result in the tarnishing of the Complainant's trademark (see *Bank of Jerusalem Ltd. v. Shek Cheung Chung*, WIPO Case No. [D2017-1153](#)).

At the time of rendering of the decision the disputed domain name did not resolve an active website. According to section 3.3 of the [WIPO Overview 3.0](#), from the inception of the UDRP, UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding.

Based on the available record, the Panel finds that the third element of the Policy has been established.

## 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 disputed domain name <clearchannell.com> be transferred to the Second Complainant.

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: July 12, 2023