

ADMINISTRATIVE PANEL DECISION

Churchill Downs Incorporated v. Karlie Riehl, Prisitne Enterprises Inc.
Case No. D2023-2337

1. The Parties

Complainant is Churchill Downs Incorporated, United States of America (“U.S.”), represented by Gray Ice Higdon, U.S.

Respondent is Karlie Riehl, Prisitne Enterprises Inc., U.S.¹

2. The Domain Name and Registrar

The disputed domain name <kentuckyderby150.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 May 30, 2023. On May 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details. In response to the Center’s notification regarding file size, Complainant resubmitted the Complaint on June 8, 2023.

The Center verified that 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 June 9, 2023. In accordance with the Rules, paragraph 5, the due date

¹The Whois record and Registrar’s verification response both appear to show the same misspelling of the word “pristine” as “prisitne” multiple times in Respondent’s contact information. Florida State Department public records indicate that Respondent Karlie Riehl was previously President of a Florida profit corporation named Pristine Marine Enterprises, Inc., and that Respondent is currently President of Pristine Marine, Inc. Florida State Department records associate Respondent’s Whois contact addresses with an address only a few doors away on the same street for the Vice President of Pristine Marine Enterprises Inc.

for Response was June 29, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on June 30, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on July 10, 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

Complainant provides entertainment activities ranging from the well-known Kentucky Derby, the horse race annually held in Louisville, Kentucky since 1875, to other racing, wagering, and regional casino gaming venues. Complainant owns many registrations for its famous KENTUCKY DERBY trademarks, for example U.S. Trademark Registration No. 997,385 (service mark) registered November 5, 1974 in International Class 41 with a first use dating from as early as 1875.

The disputed domain name was registered May 5, 2018 and does not presently resolve to an active webpage. Annexes to the Complaint, however, show that in March 2023, the disputed domain name resolved to webpages displaying sponsored advertising links and other links referring users to third-party websites apparently unrelated to Complainant's commercial activities under the KENTUCKY DERBY marks. Some links redirect users to websites offering secondary marketplaces for a variety of entertainment tickets, also including Complainant's Kentucky Derby itself. Some of the links reproduce Complainant's registered CHURCHILL DOWNS trademark.

5. Parties' Contentions

A. Complainant

Complainant avers that, since registering the disputed domain name five years ago, Respondent never used the disputed domain name to resolve to an "active website". Instead, Complainant avers, Respondent used the disputed domain name for a parking page containing the links described above, including pay-per-click ("PPC") links and links reproducing Complainant's CHURCHILL DOWNS trademark. Complainant also contends that the addition of the number "150" to the KENTUCKY DERBY mark in the disputed domain name was likely intended by Respondent to refer to Complainant's upcoming 150th Kentucky Derby event, to be held in Louisville, Kentucky in 2024.

Complainant makes several allegations respecting prior attempts to address Respondent's ownership and use of the disputed domain name.

Complainant avers that sometime in March 2023 its attorney used an aftermarket domain name broker affiliated with the Registrar to anonymously offer to purchase the disputed domain name from Respondent. Receiving no reply, Complainant avers, Complainant increased its anonymous purchase offer to two thousand dollars (USD 2,000). On or around March 23, 2023, Respondent rejected that offer, writing that Respondent had "been working on plans to develop the domain with another client in the equestrian industry, there is a possibility that I would consider selling, however \$2000 would not be of interest to me. I've owned the domain for years and have already invested time and money into the project. Depending on who your client is if they're directly related to the Derby I would consider looking at monetary compensation alone [sic] with some business courtesies compensation. Please let me know".²

After confirming Respondent's contact details with the Registrar, Complainant avers, Complainant's counsel also sent to Respondent by email and certified mail on March 27, 2023 a demand that Respondent cease

² These allegations are supported by Annexes to the Complaint, including a sworn Declaration of Complainant's Senior Counsel which includes the language quoted above.

using Complainant's trademarks and the disputed domain name. The letter also requested that Respondent arrange transfer of the disputed domain name to Complainant. In response to Complainant's demand letter, on March 29, 2023, Respondent denied in email that it was infringing Complainant's rights and stated that if Complainant was "interested in purchasing the domain KentuckyDerby150.com, [Respondent] would happily explore offers". By email of March 30, 2023, Complainant's counsel reiterated Complainant's concerns and offered to cover "any direct costs incurred by the Respondent to register the domain name (e.g., the annual domain registration fee) in exchange for the transfer of the domain name [...]"³

Complainant avers that no further communications were received from Respondent.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy. On this basis, Complainant seeks transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

For Complainant to prevail under the Policy, it must be established that (1) the disputed domain name is identical or confusingly similar to Complainant's KENTUCKY DERBY trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith. Policy, paragraph 4(a).

The fact that Respondent has not provided any Response does not, by itself, mean that Complainant prevails. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. In the absence of a Response, however, the Panel may also accept as true reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain name is confusingly similar to Complainant's KENTUCKY DERBY mark.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or confusingly similar to a complainant's marks. [WIPO Overview 3.0](#), section 1.11.1.

Omitting the ".com" TLD, the Panel notes that Complainant's entire KENTUCKY DERBY mark is included in the disputed domain name, adding only the number "150". The Panel finds that this addition to Complainant's mark does not prevent a finding of confusing similarity. See, e.g., [WIPO Overview 3.0](#), section 1.7 (where a domain name incorporates the entirety of a trademark, the domain name will normally be considered by UDRP panels to be confusingly similar); [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.").

The Panel therefore finds that the disputed domain name is confusingly similar to Complainant's mark and concludes that the first element of paragraph 4(a) of the Policy is established.

³ Copies of the relevant correspondence are included as Annexes to the Complaint.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. The Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of rebuttal passes to the respondent. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*, (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)).

The Panel accepts Complainant's undisputed allegations that Respondent has no relevant trademark rights and has no authorization or license to use Complainant's trademark in the disputed domain name. The Panel also accepts Complainant's averment that Respondent is not commonly known by the disputed domain name.

Complainant has submitted uncontroverted evidence that the disputed domain name has at times resolved to a webpage displaying links to third-party websites. The Panel finds that the linking to webpages of third parties constitutes commercial use, which eliminates the possibility of legitimate noncommercial or fair use without intent for commercial gain. See, e.g., *The Bear Stearns Companies Inc. v. Darryl Pope*, WIPO Case No. [D2007-0593](#) (“[t]he Panel is free to infer that Respondent is likely receiving some pecuniary benefit [...] in consideration of directing traffic to that site” (citing *COMSAT Corporation v. Ronald Isaacs*, WIPO Case No. [D2004-1082](#))). *Fat Face Holdings Ltd v. Belize Domain WHOIS Service Lt*, WIPO Case No. [D2007-0626](#); *Sanofi-aventis v. Montanya Ltd*, WIPO Case No. [D2006-1079](#).

Complainant also alleges that the PPC advertising links displayed on the webpage to which the disputed domain name pointed directed Internet users to third-party commercial products in competition with Complainant's offerings under its marks. The Panel agrees with Complainant that it is reasonable to conclude that Respondent was receiving revenue from the use of the advertising links. In the circumstances of this case (including the unauthorized use of Complainant's CHURCHILL DOWNS trademark in the PPC advertising links), the display of PPC advertising links on the website to which the disputed domain name routed also precludes the possibility that Respondent is making a legitimate noncommercial or fair use. E.g., [WIPO Overview 3.0](#), section 2.9.⁴

In light of the evidence and allegations of the Complaint, the Panel finds that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and that Complainant establishes a *prima facie* case. Omitting to submit a response, Respondent has neither contested nor rebutted that *prima facie* case.

The Panel finds, therefore, that Respondent has no rights or legitimate interests in the disputed domain name and that the second element of the Policy is established.

⁴ The Panel further finds that Respondent lacks rights or legitimate interests in the disputed domain name, since Respondent's use of the disputed domain name falsely suggested that Respondent is affiliated with Complainant, the trademark owner. [WIPO Overview 3.0](#), section 2.5 (a respondent's use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner).

C. Registered and Used in Bad Faith

The Panel also agrees that the Complaint establishes that Respondent has registered and used the disputed domain name in bad faith, as required under paragraph 4(a)(iii) of the Policy.

Respondent registered the disputed domain name nearly 45 years after Complainant registered its U.S. trademark rights relating the famous Kentucky Derby, which has been held annually since 1875 and has been the subject of very substantial media coverage. The Panel finds that a presumption of bad faith is created by Respondent's mere registration of a domain name which is confusingly similar to Complainant's widely-known KENTUCKY DERBY trademark. [WIPO Overview 3.0](#), section 3.1.4. This is particularly true where it appears to the Panel that Respondent intended the additional term "150" in the disputed domain name to refer to next year's upcoming 150th Kentucky Derby event, and the content of the website to which the disputed domain name resolved clearly signaled attempts to mislead Internet users to understand that the disputed domain name is associated with Complainant and its trademarks. Respondent has submitted no evidence to contradict this presumption.

The advertising links to Complainant's competitors on the webpage to which the disputed domain name resolves show Respondent's bad faith and intention to target Complainant and capitalize on Complainant's marks. See, e.g., [WIPO Overview 3.0](#), section 3.5 ("Particularly with respect to 'automatically' generated [PPC] links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name [...]. Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.").

The Panel finds that Respondent deliberately attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with Complainant's marks. This is evidence of bad faith registration and bad faith use under Policy, paragraph 4(b)(iv).

Paragraph 4(b)(i) of the Policy also provides that bad faith may be demonstrated by "circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name [...]".

Credible evidence submitted by Complainant shows that upon receipt of cease-and-desist letter, Respondent offered to sell the disputed domain name to Complainant. However, when Complainant then offered in email to cover Respondent's direct costs associated with registration of the disputed domain name in exchange for its transfer, Respondent did not reply. The evidence also shows that Respondent rejected Complainant's anonymous offer through a broker to purchase the disputed domain name for USD 2,000. The Panel finds that Respondent's silence on Complainant's offer to cover Respondent's direct costs in registering the disputed domain name in exchange for transfer and Respondent's refusal of Complainant's offer of USD 2,000 (most likely well in excess of any conceivable out-of-pocket costs) evidence Respondent's bad faith under Policy, paragraph 4(b)(i).

Respondent's provision of false or incomplete contact details in violation of Respondent's registration agreement with the Registrar is further evidence of Respondent's bad faith.⁵

Accordingly, the Panel holds that paragraph 4(a)(iii) of the Policy is satisfied.

⁵ Written Notice of the Complaint in this proceeding could not be delivered to Respondent using the contact details that Respondent provided to the Registrar.

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 <kentuckyderby150.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: July 24, 2023