

ADMINISTRATIVE PANEL DECISION

Eric A Danser v. Daniel Long

Case No. D2023-3527

1. The Parties

Complainant is Eric A Danser, United States of America, self-represented.

Respondent is Daniel Long, United States of America.

2. The Domain Name and Registrar

The disputed domain name <danserguitarworks.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 August 18, 2023. On August 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 29, 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.

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 September 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 25, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 27, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on October 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

Complainant designs and builds classical guitar and engages in related activities such as guitar restoration and repair. Complainant has operated his business under the unregistered mark DANSER GUITAR WORKS for several years, though the evidence supplied by Complainant in this regard is scant. Complainant annexed to the Complaint a business card, the front of which says, "Danser Guitar Works...fabrication, restoration, repair." The reverse side of the card says, "Andy Danser, Master Luthier," and shows a web address reflecting the Domain Name and an email address of "[...]@danserguitarworks.com".

The Panel conducted a simple Google search of Complainant's business, and Complainant's Facebook page was among the top search results¹. Complainant's Facebook page has 448 followers, and the page features fairly regular posts wherein Complainant features his activities and advertises his services. These frequent Facebook posts date back to at least 2019.

The Domain Name was registered on May 16, 2007. Complainant asserts that he was the original registrant of the Domain Name, and used it for more than a decade to promote his business. It appears that Respondent acquired the Domain Name in April 2023, when Complainant asserts that he had inadvertently allowed his registration to lapse. According to Complainant's July 30, 2023, Facebook post:

"Apparently my web domain danserguitarworks.com lapsed while I've been creating a new website and was bought by a nice fellow named Daniel Long in Alpharetta, Georgia. This happened in April so all emails to [...]@danserguitarworks.com have been going to him. If you've emailed me since then and I haven't responded I apologize. I'm in negotiations currently to get the domain back. In the meantime, please email me at [...]@gmail.com."

The Domain Name currently does not resolve to a website. According to Complainant, for a time, the Domain Name was redirected to the website of a business known as Twilio Sendgrid, which business is unaffiliated with Complainant and Complainant's area of business. Complainant alleges:

"My trademarked domain Danserguitarworks.com was bought by cybersquatter Daniel Long in bad faith to extort money from me and, in the interim, to have potential customers be redirected to Twilio Sendgrid which is a company I am not associated with and has nothing to do with my business."

Respondent has not disputed any of the foregoing allegations.

5. Parties' Contentions

A. Complainant

Complainant contends that he has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

¹ Noting in particular the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), section 4.8.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights for purposes of the Policy in the unregistered trademark DANSER GUITAR WORKS, through evidence of use demonstrated in the record. The Panel finds the Domain Name to be identical to that mark.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not come forward to articulate or prove some *bona fide* reason for registering the Domain Name. Based on the sparse but undisputed record here, the Panel finds it more likely than not that Respondent was aware of Complainant's mark when registering the Domain Name. Given the lack of evidence that Respondent has some connection with the name "Danser," and given the fact that, apart from a possible trademark, the name "Danser" has no common connection with guitar-repair and fabrication services, the only rational conclusion the Panel can draw is that Respondent was aware of Complainant and its mark when registering the Domain Name. Based on the plausible and undisputed allegations in the Complaint, the Panel also finds it more likely than not that Respondent registered the Domain Name in order to sell it for profit (without having to adopt Complainant's verb "extort"). Such conduct does not invest Respondent with rights or legitimate interests *vis-à-vis* the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates here its discussion above under the "Rights or Legitimate Interests" element. The Panel concludes that Respondent's conduct constitutes bad faith registration and use within the meaning of the above-quoted Policy paragraph 4(b)(i). Furthermore, given the previous redirection of the disputed domain name, the Panel finds it more likely than not that Respondent sought to benefit commercially from the associated Internet traffic built up during the disputed domain name's previous ownership by Complainant. See, for example, *Megan Rios d/b/a Megan LuRose v. Domains By Proxy, LLC / Wangye Lin*, WIPO Case No. [D2022-1264](#). Accordingly, in view of the totality of the circumstances, the current passive holding of the disputed domain name does not prevent a finding of bad faith. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 3.3.

Complainant has established Policy paragraph 4(a)(iii).

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 <danserguitarworks.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: October 18, 2023