

ADMINISTRATIVE PANEL DECISION

Mythical Entertainment, LLC v. Aarnav Paul
Case No. D2023-3703

1. The Parties

The Complainant is Mythical Entertainment, LLC, United States of America (“United States”), represented by Nolan Heimann LLP, United States.

The Respondent is Aarnav Paul, India.

2. The Domain Name and Registrar

The disputed domain name <goodmythicalmorningmerch.net> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2023. On September 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 4, 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 (Good Mythical Morning Merch, c/o Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 5, 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 a first amended Complaint on September 5, 2023, and a second amended Complaint on September 6, 2023.

The Center verified that the Complaint together with the amended Complaints 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 September 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 29, 2023. On September 29, 2023, an informal communication from the Respondent was received by the Center and a Possible Settlement email was sent to the Parties on October 2, 2023. On the same day, the Respondent reacted with another informal communication.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on October 31, 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 Complainant, Mythical Entertainment, LLC, is a company based in California providing entertainment services in the form of webisodes and selling merchandise related to these webisodes.

The Complainant is the owner of various trademarks including the following:

- GOOD MYTHICAL MORNING, United States word mark registered under No. 4647954 on December 2, 2014 in class 41;
- GOOD MYTHICAL MORNING, United States word mark registered under No. 4649372 on December 2, 2014 in class 25;
- MYTHICAL, United States word mark registered under No. 6016689 on March 24, 2020, in classes 9, 16 and 41;
- MYTHICAL, United States word mark registered under No. 7118132 on July 25, 2023, in class 3.

The Disputed Domain Name was registered on February 2, 2023. According to the Complainant's evidence, the Disputed Domain Name resolved to a web page appearing to offer clothing and mentioning the Complainant's GOOD MYTHICAL MORNING and MYTHICAL marks. The Panel observes that the Disputed Domain Names currently resolves to an inactive web page.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be identical and/or confusingly similar to a trademark in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent has not received any license or permission to use the MYTHICAL or GOOD MYTHICAL MORNING trademarks. The Complainant claims that the Respondent cannot assert any pre-existing right or interest in the MYTHICAL and GOOD MYTHICAL MORNING marks. According to the Complainant's, there is no indication that the Respondent is commonly known by the Disputed Domain Name. The Complainant claims that there is no legitimate purpose or fair use of the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent knew of the Complainant's MYTHICAL and GOOD MYTHICAL MORNING trademarks when it registered the Disputed Domain Name. The Complainant also claims that the Respondent is using the Complainant's GOOD MYTHICAL MORNING trademark to capitalize on the success and reputation of the Complainant and to cause consumers to purchase inferior goods from the website linked to the Disputed Domain Name instead of authentic goods from the Complainant's official website.

B. Respondent

The Respondent did not reply to the Complainant's contentions. On September 29, 2023, the Respondent sent an informal communication stating the following: "All content has been removed and I'll never upload any content on this domain. so I think you can close this case".

On October 2, 2023, the Respondent sent another communication requesting to close the present case.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (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 Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's MYTHICAL and GOOD MYTHICAL MORNING trademarks have been registered and used in the United States in connection with the Complainant's entertainment business and related merchandise.

The Panel observes that the Disputed Domain Name incorporates the Complainant's MYTHICAL and GOOD MYTHICAL MORNING trademarks entirely, simply adding the term "merch". 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 (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In the Panel's view, the addition of the term "merch" does not prevent a finding of confusing similarity between the Disputed Domain Name and the MYTHICAL and GOOD MYTHICAL MORNING trademarks.

It is well established that the generic Top-Level Domain ("gTLD"), here ".net", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

In light of the above, the Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel observes that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights (there being no Response or evidence of any such rights). According to the information provided by the Registrar, the Respondent is named “Aarnav Paul”. There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant’s MYTHICAL and GOOD MYTHICAL MORNING trademarks entirely and simply adds the descriptive abbreviation “merch”. The Panel finds that this combination can easily be considered as referring to the Complainant. Although the Complainant does not provide clear evidence of the use of its trademarks, the Panel was able to confirm that the Complainant offers clothing and other merchandise related to its entertainment business on its website “www.mythical.com” referred to in its Complaint. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

According to the Complainant’s evidence, the Disputed Domain Name referred to a website appearing to offer clothing and including the Complainant’s MYTHICAL and GOOD MYTHICAL MORNING word marks. Moreover, this website appeared to directly refer to the Complainant’s entertainment business. In the Panel’s view, this does not amount to a legitimate noncommercial or fair use of the Disputed Domain Name, or use in connection with a *bona fide* offering of goods and services. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see section 2.13 of the [WIPO Overview 3.0](#)).

The Panel observes that the Disputed Domain Name currently resolves to an inactive webpage. In the Panel’s view, this does not amount to any legitimate noncommercial or fair use either.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a substantive Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name as:

- the Complainant's GOOD MYTHICAL MORNING mark predates the registration of the Disputed Domain Name by more than 8 years;
- the Disputed Domain Name incorporates the Complainant's trademarks with the addition of a descriptive abbreviation which is easily linked to the activities of the Complainant;
- the website linked to the Disputed Domain Name directly referred to the Complainant's entertainment business and appeared to offer similar goods as the Complainant.

In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

As mentioned before, the Disputed Domain Name appeared to resolve to a website offering clothing similar to the clothing offered by the Complainant and sometimes bearing the Complainant's trademarks. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark (see *Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan*, WIPO Case No. [D2014-2227](#)).

Given the totality of the circumstances discussed above, the current state of the Disputed Domain Name referring to an inactive web page does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)). Even though the Respondent states that it "will never upload any content on this domain" there is no guarantee it will keep its promise, especially given the website it already linked to the Disputed Domain Name.

Finally, by failing to provide a substantive response to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate. The Panel finds that by confirming the removal of the content on the website linked to the Disputed Domain Name, the Respondent even implicitly admitted having used the Disputed Domain Name in bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element of the Policy.

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 <goodmythicalmorningmerch.net> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: November 14, 2023