

ADMINISTRATIVE PANEL DECISION

Mythical Entertainment, LLC v. Spencer Ord Case No. D2023-3704

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 Spencer Ord, United States.

2. The Domain Name and Registrar

The disputed domain name <goodmythicaltour.com> is registered with Squarespace Domains II LLC (the “Registrar”).¹

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 (Contact Privacy Inc. Customer 7151571251) 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 an amended Complaint on September 5, 2023. On September 5, 2023, the Center received an informal email communication from the Respondent.

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 September 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 28, 2023. The Respondent did not submit any formal response. On October 3, 2023, the Center notified the Parties that it would proceed to panel appointment.

¹ The Complaint was filed identifying the Registrar as Google LLC. On October 2, 2023, Google LLC confirmed that the disputed domain name is registered with Squarespace Domains II LLC following a purchase agreement. Google LLC has confirmed both Registrars’ compliance with the UDRP and the implementation of the decision by either Registrar.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on October 12, 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 is a limited liability company established under the law of the State of California, United States and headquartered in Beverly Hills, California. According to the Complaint, the Complainant began using the MYTHICAL and GOOD MYTHICAL MORNING trademarks in commerce since 2012, when it first started publishing a webisode series entitled ‘Good Mythical Morning’ and opened a website to sell merchandise inspired by the webisodes.² The Complainant publishes its weekday online entertainment shows on a YouTube channel, often featuring celebrity guest stars. The Complainant also operates a website at “www.mythical.com” (the “Complainant’s website”) promoting the series and selling MYTHICAL and GOOD MYTHICAL MORNING branded merchandise.

According to the Wikipedia article on “Good Mythical Morning”, by January 2019 the Complainant’s YouTube channel had more than 18 million subscribers and over 8.9 billion video views. “Good Mythical Morning” won “Show of the Year” at the 2019 and 2022 Streamy Awards, an annual industry event recognizing “the best in American streaming television series and their creators”.

The Complainant holds the following relevant United States trademark registrations:

| Mark | Registration Number | Registration Date | Class and Summary of Goods and Services |
|---|---------------------|-------------------|--|
| GOOD MYTHICAL MORNING (standard characters) | 4647954 | December 2, 2014 | IC 041: Entertainment services provided through the Internet |
| GOOD MYTHICAL MORNING (standard characters) | 4649372 | December 2, 2014 | IC 025: Caps, shoes, sweatshirts, T-shirts |
| GOOD MYTHICAL MORNING (standard characters) | 6016689 | March 24, 2020 | IC 009, 016, 041: Downloadable podcasts, webisodes ... mobile phone socket grip stand; greeting cards, posters, notebooks; Non-downloadable podcasts |
| MYTHICAL (standard characters) | 7118132 | July 25, 2023 | IC 003: Hand lotions; hair pomade; lip balm; non-medicated beard care preparations |

The Registrar reports that the disputed domain name was created on September 21, 2021, and registered in the name of a domain privacy service. After receiving the Center’s request for registrar verification in this proceeding, the Registrar identified the underlying registrant as the Respondent Spencer Ord, listing no organization and showing a postal address in California, United States, with a Gmail contact email address.

The Complainant reports that the disputed domain name has not been used for an active website. The Panel notes that the Internet Archive’s Wayback Machine has no archived screenshots associated with the disputed domain name.

² The Complainant is actually the successor to Rhett & Link, Inc., the company formed by the series’ creators that originally trademarked GOOD MYTHICAL MORNING.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is identical or confusingly similar to its MYTHICAL and GOOD MYTHICAL MORNING marks, which the Respondent has no permission to use. The Complainant contends that the Respondent is not known by a corresponding name and has never made *bona fide* commercial or noncommercial fair use of the disputed domain name.

The Complainant argues that its GOOD MYTHICAL MORNING mark was well known by the time the Respondent registered the disputed domain name and infers that the "Respondent is merely trying to reap a windfall by hoping to sell the disputed domain name to the Complainant for an exorbitant sum of money". The Complainant suggests that the Respondent could only hope to deprive the Complainant of the use of the disputed domain name and sell it to the Complainant or another for its trademark value:

"Despite registering goodmythicaltour.com in 2021, Respondent has failed to use the webpage for any reason but to prevent Complainant from using it. Because there has been no activity on the infringing website, it is clear that Respondent is squatting on the webpage with the intent of eventually capitalizing on its lucrative sale."

B. Respondent

The Respondent did not reply to the Complainant's contentions. On September 10, 2023, the Respondent sent the Center an email with the following message:

"At this time, I am only interested in exploring settlement discussions as a mechanism to sell the domain."

The Center furnished information to the Parties concerning settlement procedures but received nothing further from the Respondent.

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 first element of a UDRP complaint "functions primarily as a standing requirement" and entails "a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant holds trademark registrations for MYTHICAL and GOOD MYTHICAL MORNING. The disputed domain name incorporates the MYTHICAL mark in its entirety, and the part "good mythical" of the trademark GOOD MYTHICAL MORNING. These marks are readily recognizable in the disputed domain name, and the addition of descriptive terms or abbreviations does not avoid a finding of confusing similarity (see *id.*, section 1.8). As usual, the addition of the Top-Level Domain ".com" may be disregarded as a standard registration requirement (see *id.*, section 1.11.1).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's mark and concludes that the Complainant has established the first element of the Complaint.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's 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) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is 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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has demonstrated trademark rights and observed that the Respondent is not known by a corresponding name and has not made use of the disputed domain name. This establishes a *prima facie* case and shifts the burden of production on this issue to the Respondent. The Respondent did not submit a Response, and even the Respondent's informal emails do not suggest rights or legitimate interests in the disputed domain name but only an interest in selling it to the Complainant.

Accordingly, the Panel finds on this record that the Respondent lacks rights or legitimate interests in the disputed domain name concludes that the Complainant prevails on the second element of the Complaint.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b), furnishes a list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", including the following:

- "(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; [...]"

There is no evidence of a pattern of similar conduct in this proceeding. However, the record demonstrates that the Complainant's GOOD MYTHICAL MORNING mark was well established, with a distinctive and highly recognized online presence in the United States market where the Respondent is located, by the time the Respondent registered the disputed domain name.

The Respondent did not offer to sell the disputed domain name to the Complainant until this proceeding was underway, and a price was not mentioned in the Respondent's email of September 10, 2023. Thus, it is not clear that paragraph 4(b)(i) fits the circumstances here.

But the examples of bad faith cited in paragraph 4(b) are expressly non-exclusive, and the facts here more readily comport with the “passive holding” scenario as described in [WIPO Overview 3.0](#), section 3.3 and in the many decisions following *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). As in those decisions following *Telstra*, the mark in this case is highly distinctive, with a strong reputation; the Respondent failed to submit a Response or provide evidence of actual or contemplated good-faith use; and such good faith use is implausible.

In support of this last point, the Panel notes that Internet search engine results for “good mythical tour” refer for many pages to the Complainant and not to any other organization or generic sense of the phrase. Moreover, no trademark registrations or applications for “Good Mythical Tour” appear in the WIPO Global Brand Database or the online trademark database of the United States Patent and Trademark Office. Thus, it is improbable that the Respondent harbored an intended good faith use for the disputed domain name. Holding a domain name in the hope of ultimately exploiting the reputation built by another is deemed bad faith under the Policy.

The Panel finds bad faith on this record and concludes that the Complainant has established the third element of the Complaint.

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 <goodmythicaltour.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: October 26, 2023