

ADMINISTRATIVE PANEL DECISION

Multi Media, LLC v. Laura Palmer

Case No. D2023-3737

1. The Parties

The Complainant is Multi Media, LLC, United States of America (“United States”), represented by Walters Law Group, United States.

The Respondent is Laura Palmer, Thailand.

2. The Domain Names and Registrar

The disputed domain names <recurbate.cc>, <recurbate.com>, and <recurbate.xyz> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 7, 2023. On September 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Privacy Service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 8, 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 12, 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 September 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 20, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on October 27, 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 owns and operates the domain name <chaturbate.com>, which resolves to its Chaturbate platform offering live webcam adult entertainment (the “Complainant’s website”). In July 2023, the Complainant’s website had 458 million visits and a global traffic ranking of No. 52 by Similarweb.

The Complainant is the owner of the following trademark registrations for CHATURBATE (the “CHATURBATE trademark”):

- the United States trademark CHATURBATE with registration No. 4288943, registered on February 12, 2013, for services in International Classes 38 and 42; and
- the United States trademark CHATURBATE with registration No. 4988208, registered on June 28, 2016, for services in International Classes 38 and 42.

The disputed domain names were registered on the following dates:

Disputed Domain Name	Registration date
<recurbate.com>	September 27, 2018
<recurbate.cc>	August 18, 2021
<recurbate.xyz>	September 23, 2022

At the date of filing of the Complainant, all disputed domain names resolved to adult websites with the titles “Recurbate The Chaturbate Archive”, “Recurbate.cc The Chaturbate Archive Mirror”, and “Recurbate.xyz The Chaturbate Archive”, respectively. Each of these websites includes a footer that reads, “Recurbate records your favorite live adult webcam broadcasts making (sic) by your lovely performers from Chaturbate.com to watch it later” and claimed to contain “[m]ore than 27,235,871 hours of video of 200,238 Chaturbate performers”. The websites offered paid subscription options.

5. Parties’ Contentions

A. Complainant

The Complainant states that its website at “www.chaturbate.com” is one of the most-visited websites in the world and has become a prime target for cybersquatters wishing to profit from the goodwill of the Complainant’s CHATURBATE trademark.

The Complainant submits that the disputed domain names are confusingly similar to the CHATURBATE trademark, because they are mimicking it, taking the “chat” portion out and replacing it with “rec”, which the Respondent appears to be using on purpose to suggest that the websites at the disputed domain names are stolen “recordings” of content provided by the Complainant’s users. According to the Complainant, this difference does not prevent a finding of confusing similarity with the CHATURBATE trademark. The Complainant adds that the website content should also be taken into account in determining confusing similarity, because the Respondent’s websites feature content trading off the Complainant’s reputation, include various references to its CHATURBATE trademark, and claim to contain tens of millions of hours of video by hundreds of thousands of Chaturbate performers. According to the Complainant, this shows that the Respondent specifically selected the disputed domain names as a play on the Complainant’s trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names, because it has no connection with the Complainant and has not received any authorization to use the CHATURBATE trademark in the disputed domain names or in any other manner. The Complainant maintains that the Respondent is not commonly known by this trademark and does not hold any trademarks for the disputed domain names.

The Complainant notes that the Respondent registered the disputed domain names in 2018, 2021, and 2022, which is well after the Complainant first registered the CHATURBATE trademark in 2013. According to the Complainant, the Respondent registered and used the disputed domain names not because they refer to or are associated with it, but because they are confusingly similar to the Complainant's <chaturbate.com> domain name and the CHATURBATE trademark used by the Complainant in association with the provision of online audio, visual, and audiovisual services. According to the Complainant, the Respondent cannot use the disputed domain names for any legitimate purpose, and actually, they resolve to websites that openly advertise stolen content from the Complainant's website and allow visitors to gain unauthorized access to the copyright-protected content broadcasted by the Complainant's users on its website at "www.chaturbate.com". In the Complainant's view, the Respondent is receiving a commercial benefit from using the Complainant's registered trademark in conjunction with the distribution of infringing content in this manner. The Complainant submits that encouraging users to pirate the copyright-protected content of the Complainant's users and depriving the Complainant and its users of compensation for that content cannot give rise to rights or legitimate interests in the disputed domain names.

The Complainant contends that the disputed domain names were registered and are being used in bad faith. It notes that it had been using its CHATURBATE trademark since June 2011, which is more than seven years before the Respondent registered the earliest of the disputed domain name. In the Complainant's view, the Respondent registered the disputed domain names because it knew of the Complainant and the goodwill associated with its CHATURBATE trademark, in attempt to divert Internet traffic from the Complainant and to offer adult entertainment content (including content pirated from the Complainant's users) in direct competition with the Complainant. The Complainant maintains that the Respondent's registration and use of the disputed domain names was designed to create a likelihood of confusion among the consuming public as to the source, sponsorship, affiliation, or endorsement of the Respondent's infringing website, in order to take advantage of Internet users who wish to use the Complainant's content.

The Complainant notes that it sent a cease-and-desist letter to the Respondent on August 4, 2023, demanding the Respondent to stop using and cancel the disputed domain names, to which the Respondent did not respond.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

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

The Panel finds the CHATURBATE trademark is recognizable within the disputed domain names. As discussed in section 1.7 of the [WIPO Overview 3.0](#), in cases where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. The Panel finds that a dominant feature of the Complainant's CHATURBATE trademark – its “urbate” sequence, is recognizable in each of the disputed domain names.

As discussed in section 1.15 of the [WIPO Overview 3.0](#), panels have in some instances taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears *prima facie* that the respondent seeks to target a trademark through the disputed domain name. At the time of filing of the Complaint, the websites at the disputed domain name advertised themselves as “The Chaturbate Archive” and claimed to contain millions of hours of video by hundreds of thousands of Chaturbate performers. The websites claimed that they record live adult webcam broadcasts by performers from “chaturbate.com” for watching later. These statements support a conclusion that the Respondent likely sought to target the Complainant's Chaturbate platform and its CHATURBATE trademark with the disputed domain names and the associated websites.

Taking all the above into account, the Panel considers that the disputed domain names are confusingly similar to the Complainant's CHATURBATE trademark for the purposes of the Policy, and finds 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 names. 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 names such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In its Complaint and in its cease-and-desist letter sent to the Respondent prior to this proceeding, the Complainant claims that the Respondent commits copyright infringement by offer copyright-protected video content from the Complainant's platform, and submits evidence that the Respondent's websites have advertised themselves as being the “Chaturbate Archive” containing tens of millions of hours of video by hundreds of thousands of Chaturbate performers and offering paid subscription options. The websites claimed that they contain recordings of live adult webcam broadcasts by performers from “chaturbate.com”, while the disputed domain names contain the dominant part of the Complainant's CHATURBATE trademark. The Respondent has not denied the Complainant's statements and has not disputed the evidence submitted with the Complaint. It has not brought before the Panel any argument why its activities should be regarded

as legitimate. Taking the above into account, the Panel finds that it is more likely than not that the Respondent has indeed engaged for financial gain in an illegitimate offering and distribution of copyright-infringing content, which does not support a finding that it has rights or legitimate interests in the disputed domain names.

Based on the available record, the Panel therefore 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.

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 held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

As discussed in the previous section on rights and legitimate interests, it appears more likely that, through the registration and use of the disputed domain names, the Respondent has engaged in an illegitimate offering of copyright-protected video content originating from the Complainant's website and belonging to third parties, and this has been done for financial gain. The Respondent has not submitted a Response and has not denied this conclusion or brought forward any plausible explanation of its conduct.

Having reviewed the record, the Panel therefore finds the Respondent's registration and use of the disputed domain names constitutes an illegal activity carried out in bad faith under the Policy. Therefore, 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 names <recurbate.cc>, <recurbate.com>, and <recurbate.xyz> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: November 2, 2023