

ADMINISTRATIVE PANEL DECISION

Righteous Guitars, LLC. v. Name Redacted¹
Case No. D2023-4263

1. The Parties

Complainant is Righteous Guitars, LLC., United States of America (“US”), represented by Thomas Horstemeyer, LLP, United States of America.

Respondent is Name Redacted

2. The Domain Name and Registrar

The Domain Name <righteousguitars.shop> (the “Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2023. On October 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 14, 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”).

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on October 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2023. On October 25, 2023, a third-party submitted an email on behalf of the alleged Respondent, claiming that the third party was unaware of the domain name registration in his name. Accordingly, the Center notified Respondent of the Commencement of Panel Appointment Process on November 14, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on November 21, 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, Righteous Guitars, LLC, a US company with its principal place of business in the state of Georgia, US, owns and operates retail store services and online retail store services featuring musical instruments, amplifiers and accessories.

Complainant owns US trademark registration number 5,120,146 for the RIGHTEOUS word mark, registered on January 10, 2017. Complainant also owns and operates the domain name <righteousguitars.com>, which was registered on January 31, 2015.

The Domain Name was registered on July 26, 2023 and resolves to a website featuring Complainant's RIGHTEOUS trademark, and musical equipment such as guitars and related accessories.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for RIGHTEOUS and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known RIGHTEOUS services and related products.

Complainant notes that it has no affiliation with Respondent and contends that Respondent is using the Domain Name as a tool to exploit Complainant's reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name other than trademark infringement. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not formally reply to Complainant's contentions. However, on October 25, 2023, a third party, though his attorney, contacted the Center regarding the claimed unauthorized use of his identity in relation to the Domain Name in the current proceedings. In particular, the third party indicated that he "is not now, nor has he ever been engaged in the sale of guitars. He has no knowledge of the domain which is the subject of this matter."

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (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 was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) states that failure to respond to the complainant’s contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the RIGHTEOUS trademarks, as noted above under section 4. Complainant has also submitted evidence which supports that the RIGHTEOUS trademark is widely known and a distinctive identifier of Complainant’s products and services. Complainant has therefore proven that it has the requisite rights in the RIGHTEOUS trademarks.

With Complainant’s rights in the RIGHTEOUS trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain (“TLD”) in which it is registered (in this case is, “.shop”), is identical or confusingly similar to Complainant’s trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant’s RIGHTEOUS trademarks. These RIGHTEOUS trademarks are recognizable in the Domain Name. In particular, the Domain Name’s inclusion of Complainant’s trademark RIGHTEOUS in its entirety, with an addition of the term “guitars”, does not prevent a finding of confusing similarity between the Domain Name and the RIGHTEOUS trademarks. See [WIPO Overview 3.0](#), section 1.8.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a Domain Name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its RIGHTEOUS trademarks, and does not have any rights or legitimate interests in the Domain Name.

In addition, Complainant asserts that Respondent is not an authorized reseller and is not related to Complainant. Respondent is also not known to be associated with the RIGHTEOUS trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of filing of the Complaint, the Domain Name resolved to a website that prominently featured the RIGHTEOUS trademark, while offering identical services to that offered by Complainant, that is, musical instruments, amplifiers and related accessories, which are directly in the field of Complainant's business and industry - which could mislead Internet users into thinking that the website has been authorized or operated by or affiliated with Complainant, and offered RIGHTEOUS-branded services to sell products in the same field as in Complainant's business without disclosing the relationship (or the lack of relationship) between Complainant and Respondent. In addition, the website also offered discounted gift certificates for the purchase of Righteous Guitars.

At the time of the Decision, the Domain Name reverted to an error or inactive page. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Moreover, the nature of the Domain Name is inherently misleading, and carries a risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Furthermore, a third party through his lawyer, contacted the Center regarding the claimed unauthorized use of his identity in relation to the Domain Name in the current proceeding, as noted above, reinforcing the notion that Respondent was not using the Domain Name in connection with a *bona fide* offering. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(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; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

The Panel finds that Complainant has provided ample evidence to show that registration and use of the RIGHTEOUS trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's RIGHTEOUS trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the RIGHTEOUS trademarks when it registered the Domain Name or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of 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](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's RIGHTEOUS trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the RIGHTEOUS trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. Moreover, the additional descriptive term "guitars" in the Domain Name is also directly associated with Complainant's business activities in the field of musical instruments, further indicating Respondent's actual knowledge of Complainant and its trademarks, and that Respondent's registration of the Domain Name was in bad faith.

In addition, the evidence provided by Complainant indicated that at the time of filing of the Complaint, the Domain Name resolved to a website that prominently featured Complainant's RIGHTEOUS trademark, offered gift certificates at a discounted price, and Complainant's RIGHTEOUS-branded services for the sale of musical instrument, including guitars, amplifiers and related accessories, which could mislead Internet users into thinking that the website has been authorized or operated by or affiliated with Complainant, and offered RIGHTEOUS-branded services for selling such products. In addition, a third party contacted the Center regarding the claimed unauthorized use of its identity in relation to the Domain Name in the current proceeding, as noted above. In particular, this third party indicated that he is not now, nor has he ever been engaged in the sale of guitars. He has no knowledge of the domain which is the subject of this matter" reinforcing the notion that Respondent was not using the Domain Name in connection with a *bona fide* offering and in fact, using it in bad faith. At the time of the Decision, the Domain Name reverted to an error or inactive page. Such use included Respondent's unauthorized reproduction of Complainant's RIGHTEOUS marks, which could mislead Internet users into thinking that the respective website has been authorized or operated by or affiliated with Complainant, and offered RIGHTEOUS-branded services for sale of products in Complainant's business and industry, and what appears to be the use of false contact information - all of which have not been rebutted by Respondent. Such use cannot be considered in good faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known RIGHTEOUS products and services of Complainant or authorized partners of Complainant. The use of the RIGHTEOUS mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Therefore, by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's webpage by creating a likelihood of confusion with Complainant's RIGHTEOUS marks as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

Further, the Panel also notes the failure of Respondent to submit a formal Response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <righteousguitars.shop> be transferred to Complainant.

/Kimberley Chen Nobles/
Kimberley Chen Nobles
Sole Panelist
Date: November 29, 2023