

## **ADMINISTRATIVE PANEL DECISION**

Coachella Music Festival, LLC v. Nathan Sassover, INVESTEON LLC  
Case No. D2023-4957

### **1. The Parties**

Complainant is Coachella Music Festival, LLC, United States of America (“United States”), represented by Tucker Ellis, LLP, United States.

Respondent is Nathan Sassover, INVESTEON LLC, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <coachellatv.com> is registered with Moniker Online Services, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 28, 2023. On November 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on November 30, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 4, 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 Respondent of the Complaint, and the proceedings commenced on December 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023 (“Response Deadline”) Respondent did not submit any response by the Response Deadline. Accordingly, on January 3, 2024, the Center notified Respondent’s default. On January 4, 2024, Respondent filed a late Response with the Center. Complainant sent an unsolicited supplemental filing to the Center on January 5, 2024, challenging the Response. Respondent sent an email communication to the Center on January 8, 2024, as a Reply to Complainant’s unsolicited supplemental filing.

The Center appointed Scott R. Austin as the sole panelist in this matter on January 16, 2024. 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 following facts appear from the Complaint (as amended) and its attached annexes, which have not been contested by Respondent, and which provide evidence sufficient to support:

Complainant owns and produces the Coachella Valley Music and Arts Festival in Indio, California, which festival Complainant asserts is world-famous. Complainant has claimed trademark rights to its festival by virtue of its use and registration of the trademarks COACHELLA (the "COACHELLA Mark") and COACHELLA VALLEY MUSIC AND ARTS FESTIVAL (collectively, with the COACHELLA Mark, the "COACHELLA Marks") to identify the entertainment services provided by its festival.

Held annually since October 1999 at an 800 acre site near Los Angeles the festival's attendance and its prominence within the music industry have grown substantially. Attendance aggregated over the multi-day festival currently totals nearly 750,000 attendees per year. Complainant shows in the annexes that the festival has featured a range of the world's most famous musical artists from AC/DC and Beyoncé to Madonna, Paul McCartney, Prince, The Cure, and Tool.

Complainant also shows it incorporates the COACHELLA Mark into its official registered domain name <coachella.com>, registered since February 13, 1997, which Complainant shows it uses to connect its concertgoing community and promote its products through its official website accessed at "www.coachella.com" (the "Official COACHELLA Mark Website"). Annexed evidence submitted shows that between January 1, 2022, and May 1, 2022, the Official COACHELLA Mark Website received 16 million page views and hosted over 6 million users in over 10 million sessions.

In addition to its official domain name and the Official COACHELLA Mark Website, Complainant has established a strong social media presence, as its YouTube account has over 2.4 million subscribers; Facebook page has over 2.4 million followers; Twitter account has over 1 million followers; Instagram account has over 2.4 million followers; and TikTok has over 239,000 followers.

Complainant owns a number of registrations in the United States for the COACHELLA Marks, including the following:

United States Registration No. 3196119, COACHELLA, registered on January 9, 2007, for "entertainment, namely, organizing and producing musical events", in International Class 41, claiming a first use in commerce date of October 1, 1999;

United States Registration No. 4270482, COACHELLA, registered on January 8, 2013, for a range of merchandise in International Classes 16, 21 and 25, claiming a first use in commerce date of May 1, 2009; and

United States Registration No. 3196128, COACHELLA VALLEY MUSIC AND ARTS FESTIVAL, registered on January 9, 2007, for "entertainment, namely, organizing and producing musical events", in International Class 41, claiming a first use in commerce date of October 1, 1999.

Respondent registered the disputed domain name on May 20, 2017, and it resolves to an impersonation or "copycat" website featuring Respondent's unauthorized use of the COACHELLA Mark beginning with a landing page under the title "Coachella TV" as well as unauthorized copies of Complainant's YouTube videos of festival musical performances bearing the COACHELLA Mark.

## 5. Parties' Contentions

### A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name: that the disputed domain name is confusingly similar to Complainant's trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

### B. Respondent

Respondent did not reply to Complainant's contentions by the December 26, 2023, Response Deadline as provided in the notice from the Center. However, Respondent submitted a late Response on January 4, 2024, claiming delay due to the need for "additional research". Further, the Respondent also sent an email communication on January 8, 2024, in reply to Complainant's unsolicited supplemental filing received on January 5, 2024, neither of which will be considered by the Panel for reasons set out below.

In Respondent's late Response filed on January 4, 2024, Respondent asserted, inter alia, continuing rights and legitimate interests in the disputed domain name, stating that Respondent had never received any complaints concerning the disputed domain name since its registration on May 20, 2017, and that, "the website appeared within 1 year with a disclaimer in the AboutUs section and is intended as a community news and information site known locally, regionally and globally as Guides to notable geographic destinations". The Respondent continued by asserting that the disputed domain name "has caused no harm, confusion or economic damage to the Coachella Festival".

## 6. Discussion and Findings

### 6.1. Procedural Issues: Admissibility of Late Response and Parties' Supplemental Filings

Further to section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[p]aragraph 10 of the UDRP Rules vests the panel with the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition". Similarly, "[p]aragraph 12 of the UDRP Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case". *Id.* Finally, "[u]nsolicited supplemental filings are generally discouraged, unless specifically requested by the panel. *Id.*

While the Response received on January 4, 2024, was received well after the Response Deadline, the Panel will consider the late-filed Response for purposes of equity, completeness and because the contentions and assertions submitted by Respondent in the Response do not impact the Panel's findings or the outcome of the Decision, Neither Complainant's unsolicited supplemental filing of January 5, 2024, nor Respondent's reply on January 8, 2024, need to be considered.

### 6.2. Substantive Issues

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 Complainant to make out its case and it is apparent from the terms of the Policy that 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 a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

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

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

### **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 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.

Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant has demonstrated its rights because it has shown that it is the holder of numerous valid and subsisting trademark registrations for its COACHELLA Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant's rights in the COACHELLA Mark established, the remaining question under the first element of the Policy is if the disputed domain name is identical or confusingly similar to Complainant's COACHELLA Mark.

The entirety of Complainant's COACHELLA Mark is reproduced within the disputed domain name while adding the term "tv", an accepted abbreviation for "television" and the generic Top-Level-Domain ("gTLD") ".com". Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "tv", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8; see also *Eurochannel Inc. v. Sarah Staar*, WIPO Case No. [D2007-0165](#); see also *Rakuten, Inc. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Matthew Connor, No Company*, WIPO Case No. [D2019-2983](#).

The gTLD, in this case ".com", is disregarded for this comparison because it is functionally necessary for the disputed domain name to be registered. See *Research In Motion Limited v. Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#) (gTLD irrelevant for confusing similarity determination); [WIPO Overview 3.0](#), section 1.11 ("The applicable Top Level Domain ('TLD') in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.").

Complainant's COACHELLA Mark is incorporated in its entirety into the disputed domain name and for that reason the Panel finds the disputed domain name confusingly similar to the COACHELLA Mark in which Complainant has rights. Complainant has satisfied paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise.

First, Complainant contends that Respondent is not and has never been a representative or licensee of Complainant nor is Respondent authorized by Complainant to register or use the COACHELLA Mark in any manner in a domain name or otherwise. Prior UDRP panels have found the fact that a respondent is not authorized to register or use a complainant’s mark, “on its own, can be sufficient to prove the second criterion [of the Policy]”. *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#); see also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) (finding no rights or legitimate interests where domain name incorporated complainant’s registered mark and respondent was not a licensee of complainant).

Second, it is clear from the record submitted that Respondent is using the disputed domain name to create a false association with or impersonate Complainant and thereby intentionally misdirect and divert, for commercial gain, Internet users to Respondent’s website, by creating a likelihood of confusion with Complainant and Complainant’s well-known COACHELLA Marks. While Respondent simply denies Complainant’s contentions on commercial use, the “Contact Us” section of Respondent’s website invites Internet users to contact an email address (not linked or connected to Complainant) for purposes of “doing business” and states that the reported website provider seeks to “connect people around the world, both online and offline, to make, sell, and buy unique goods”. Respondent’s alleged disclaimer on the “About Us” page section does not impact the Panel’s analysis since Respondent’s disclaimer is hidden on a subpage of the disputed domain name and is ineffective in terms of meeting the standards for disclaimers required under decisions by prior UDRP panels in similar circumstances. Where, as here, the overall circumstances of a case point to the respondent’s bad faith, the mere existence of a disclaimer cannot cure such bad faith, and the presence of such an intentionally concealed disclaimer may in fact serve as an admission of bad faith. See [WIPO Overview 3.0](#), section 3.7.

Lastly, the general nature of Respondent’s website content reinforces the notion that the Respondent sought to mislead Internet users to its own contact information and businesses via the use of Complainant’s distinctive COACHELLA Marks. Prior UDRP panels have consistently held that use of a disputed domain name to misdirect Internet users seeking a complainant to a competitive or unrelated site is not a bona fide offering of goods or services or a legitimate noncommercial or fair use under the Policy. See *Kosmea Pty Ltd. v. Krpan*, WIPO Case No. [D2000-0948](#). Accordingly, Respondent is not making a bona fide offering of goods or services and, therefore, Respondent has no rights or legitimate interest in the disputed domain name under the circumstances described in paragraph(4)(c)(ii) of the Policy.

Complainant has also shown that Respondent is not commonly known by the disputed domain name. The Registrar disclosed the underlying registrant name and organization as, “Nathan Sassover/INVESTEON LLC”, which Complainant amended its Complaint to name as Respondent. Respondent bears no resemblance to the disputed domain name whatsoever. Furthermore, the “Contact Us” section of the disputed domain name’s website also identifies third party platforms, none of which bear any resemblance to the disputed domain name and would seem to be competitors of Complainant in the broadcasting industry. These facts combined with the well-known status of the COACHELLA Mark and the lack of evidence in the record to suggest otherwise allows this Panel to find that Respondent is not commonly known by the disputed domain name or any variation thereof pursuant to Policy paragraph 4(c)(ii). See *Six Continents*

*Hotels, Inc. v. Trasporto di Networ and Pro Intel*, WIPO Case No. [D2004-0246](#) (“given Complainant’s established use of its... marks, it is unlikely that the Respondents are commonly known by any of these marks”).

It is also generally regarded as prima facie evidence of no rights or legitimate interests if a complainant shows that the disputed domain name is identical or confusingly similar to a complainant’s trademark, that the respondent is not commonly known by the disputed domain name, and that a complainant has not authorized the respondent to use its mark (or an expression which is confusingly similar to its mark), whether in the disputed domain name or otherwise. See *Roust Trading Limited v. AMG LLC*, WIPO Case No. [D2007-1857](#).

Most importantly, Complainant contends Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services because, as Complaint’s submitted evidence of web page printouts shows the disputed domain name resolves to a website where Respondent is attempting to pass itself off as Complainant or an affiliate or associate of Complainant. Contrastingly, Respondent claims to use the disputed domain name as a “regional news hub integrating” news networks in the “Coachella Valley”, seemingly arguing a geographic use of Complainant’s trademark that is clearly contradicted by the actual website content hosted at the disputed domain name that impersonates Complainant displaying copies of Complainant’s copyright protected videos from festival performances. The Panel notes that evidence submitted in the annexes to the Complaint persuasively supports Complainant’s argument because it shows Respondent’s website references Complainant’s festival using the COACHELLA Mark in both standard and stylized logo forms, and prominently features infringing copies of Complainant’s copyright protected videos from Complainant’s official YouTube channel. Respondent, therefore, is using the disputed domain name to confuse Internet users and suggest an affiliation with or sponsorship by Complainant. Based on these facts the Panel finds Respondent’s actions are clearly not legitimate and clearly are misleading. Respondent, therefore, cannot establish rights or legitimate interests pursuant to paragraph 4(c)(iii) of the Policy. See *Six Continents Hotels v. “m on”*, WIPO Case No. [D2012-2525](#).

In view of the above, the Panel finds that Complainant has made out a prima facie case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent has not submitted any evidence to rebut Complainant’s prima facie case. The Panel determines, therefore, that Respondent does not have rights or legitimate interests in the disputed domain name and Complainant has successfully met its burden under Policy paragraph 4(a)(ii).

### **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.

In the present case, the Panel first notes that Complainant has submitted evidence sufficient to support a finding of Respondent’s bad faith registration and use of the disputed domain name under Policy paragraph 4(b)(iv).

It is well settled that the registration and commercial use of a confusingly similar domain name, to create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the respondent’s website, thereby taking advantage of the complainant’s mark for a respondent’s commercial gain, supports a finding of bad faith registration and use under Policy paragraph 4(b)(iv). See *Converse Inc. v. Perkins Hosting*, WIPO Case No. [D2005-0350](#).

Here, Respondent, who is unaffiliated with Complainant, has registered the disputed domain name to display under the impersonating and misleading title “Coachella TV”, infringing copies of copyrighted videos taken from Complainant’s official YouTube account as well as videos of the Coachella festival from the YouTube accounts of others.

The Panels finds such use of the disputed domain name that is confusingly similar to Complainant’s COACHELLA Marks, to divert Complainant’s consumers to Respondent’s website is bad faith registration



and use under the Policy paragraph 4(b)(iv). See e.g., *AT&T Corp. v. Yong Li*, WIPO Case No. [D2002-0960](#).

Paragraph 4(b) of the Policy also 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.

Complainant contends that Respondent registered the disputed domain name in bad faith because Respondent has created a disputed domain name that is confusingly similar to Complainant's well-known COACHELLA Mark, as found in section 6.2.A above. Prior UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a widely known or famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. See, [WIPO Overview 3.0](#), section 3.1.4.

Given the record shows that Complainant's well-known COACHELLA Mark is protected by trademark registrations in the United States where Respondent is purportedly located, the oldest of which was registered over a decade prior to Respondent's registration of the disputed domain name, which like Complainant's official domain name <coachella.com>, encompasses the COACHELLA Mark in its entirety, the Panel finds it is implausible to believe that Respondent did not have actual knowledge of Complainant's well-known COACHELLA Mark when it registered the confusingly similar disputed domain name.

Prior UDRP panels have held that a respondent's actual knowledge of a complainant's mark may serve as a basis for finding bad faith registration. See *OSRAM GmbH v. Azarenko Vladimir Alexeevich, Azarenko Group Ltd*, WIPO Case No. [D2016-1384](#) (finding bad faith where "Respondent must have been aware of Complainant and its said trademark when it registered the disputed domain name" and "the Panel cannot conceive of any use that the Respondent could make of the disputed domain name that would not interfere with Complainant's long-established trademark rights"). Accordingly, the Panel finds that Respondent had actual knowledge of the COACHELLA Mark when it registered the disputed domain name, and such a showing is sufficient to establish bad faith registration of the disputed domain name.

Finally, the Panel notes that Respondent's bad faith registration and use is further established based on Complainant's showing that Respondent engages in a pattern of registering domain names based on the trademarks of others and then monetizes them with sponsored advertising. Respondent's website in this proceeding provides links to VOGUESpain, VOGUETaiwan, VOGUEPortugal, VOGUEGreece, VOGUETHailand, ELLESpain, ELLEGermany, ELLEBrazil, ELLEHongKong, and ELLETaiwan which when accessed show Respondent is also impersonating these famous brands for Respondent's commercial gain in a fashion similar to the circumstances presented here. This pattern of illegal conduct is further evidence of bad faith registration and use by Respondent. See e.g., *Trinity Mirror Plc and MGN Ltd. v. Piranha Holdings*, WIPO Case No. [D2008-0004](#).

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that Complainant has established the third 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 <coachellatv.com> be transferred to Complainant.

*/Scott R. Austin/*

**Scott R. Austin**

Sole Panelist

Date: February 8, 2024