

## **ADMINISTRATIVE PANEL DECISION**

TaTanisha Leer v. Host Master, 1337 Services LLC  
Case No. D2023-5142

### **1. The Parties**

The Complainant is TaTanisha Leer, United States of America, represented by Minc LLC, United States of America.

The Respondent is Host Master, 1337 Services LLC, Saint Kitts and Nevis.

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

The disputed domain name <tatanishaleer.com> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 8, 2023. On December 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 11, 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 (Unknown at this time) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 13, 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 December 13, 2023.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint on December 18, 2023, and the proceedings commenced on December 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 10, 2024. On January 31, 2024, the Center sought clarification as to the mutual jurisdiction. The Complainant was given five days to clarify the mutual jurisdiction, and the Respondent was given until February 10, 2024, to respond to the Complainant’s further submissions. The Complainant filed an amended Complaint on February 2, 2024, clarifying the mutual jurisdiction. The Respondent did not submit any response.

The Center verified that the Complaint, together with the amendments to 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”).

The Center appointed Jeremy Speres as the sole panelist in this matter on January 23, 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 Complainant is a retired educator and philanthropist. In 2017, the Complainant started a charitable organisation named “Keegan’s Promise”, the primary aim of which is assisting couples with the costs associated with adoption.

The Complainant owns the domain name <tanishaleer.com>, which was registered on April 3, 2023, and operates a website from it, in furtherance of her charitable endeavours.

The disputed domain name was registered on May 19, 2023, and resolves to a website highly critical of the Complainant and her husband, accusing them of, amongst others, fraud and various other financial malpractices.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Complainant contends that the disputed domain name, which is identical to the Complainant’s full name, falsely, and without evidence, accuses the Complainant of crimes and is thus defamatory of the Complainant.

##### **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 trade mark 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’s evidence coupled with online searches establish that the Complainant’s name enjoys at least some recognition through her charitable and business endeavours, and that it has become a distinctive identifier of the Complainant’s services in effect conferring common law rights. [WIPO Overview 3.0](#) at section 1.5. As discussed below, the Respondent has clearly targeted the Complainant’s mark, which supports the Complainant’s contention that her name has achieved significance as a source identifier. [WIPO Overview 3.0](#) at section 1.3.

As the disputed domain name is plainly identical to that mark, the Complainant has satisfied the requirements of the first element of the Policy.

## **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.

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.

The disputed domain name’s website is used for non-commercial criticism of the Complainant, and the Respondent could, potentially, rely on paragraph 4(c)(iii) of the Policy. To support such fair use, the Respondent’s criticism must be genuine and noncommercial, and not a pretext for commercial activity, cybersquatting or tarnishment. As far as the Panel can tell, the Respondent’s website is noncommercial and there are no indicia of tarnishment or cybersquatting. To be clear, unwanted criticism is not tarnishment; the latter refers to unseemly conduct such as linking unrelated pornographic, violent or drug-related images, or information meant to disparage an otherwise wholesome mark. See *Dover Downs Gaming & Entertainment, Inc. v. Domains By Proxy, LLC / Harold Carter Jr, Purlin Pal LLC*, WIPO Case No. [D2019-0633](#).

Assessing whether or not the Respondent’s criticism of the Complainant has any merit or is defamatory is beyond the scope of a cybersquatting enquiry under the Policy and is best left to the courts. See *LCF Law Limited v. Lee Tyson, BDTHREE*, WIPO Case No. [D2021-2412](#).

The fact that the Respondent’s content may amount to genuine, noncommercial, non-pretextual criticism of the Complainant is not the end of the matter. The consensus amongst panels under the Policy is, in order to constitute fair use under the Policy, the domain name must not impersonate the trade mark owner and the domain name itself should clearly signal to potential visitors that any associated website is likely to contain free speech content, lest it otherwise draw in by deception those users looking for the Complainant’s own online presence. An identical domain name to the trade mark concerned would therefore prima facie fall foul of the “impersonation test”. See [WIPO Overview 3.0](#) at section 2.6.2 and *LCF Law Limited supra*.

The disputed domain name here matches the Complainant’s mark exactly and does not contain any indication whatsoever that it resolves to content critical of the Complainant or is otherwise not associated with the Complainant, in circumstances where it was open to the Respondent to select a domain name that makes this clear. There is thus a risk that the public would assume that the disputed domain name is authorised by or affiliated with the Complainant, which is not a fair use and does not support a legitimate interest. See *Lumsa - Libera Università Maria SS. Assunta v. Host Master, 1337 Services LLC*, WIPO Case No. [D2023-1939](#). The disputed domain name thus cannot constitute fair use under the Policy.

The Panel finds 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.

That the Respondent was aware of and targeted the Complainant is beyond doubt; the entirety of the Respondent’s website is directed at the Complainant specifically.

As discussed above, the disputed domain name is identical to the Complainant's mark and is likely to lead to users assuming an affiliation with the Complainant. The disputed domain name has the appearance of the Complainant's official online presence and is therefore inherently deceptive. The Respondent could have included words within the disputed domain name that negate this, and which make it clear that it is intended for content critical of the Complainant. The Respondent chose not to where there are many conceivable alternatives that would have made this clear and which would have been easily registrable by the Respondent. In the circumstances, the Panel's view is that the disputed domain name was more than likely deliberately selected and used in bad faith in order to drive traffic to the Respondent's site resulting from the type of user confusion addressed above. See *SwissCare Europe v. michael click, Active OutDoors LLC*, WIPO Case No. [D2022-1496](#). The fact that the Respondent chose not to respond to these allegations supports this conclusion in the circumstances, and the Panel draws inferences from the Respondent's default accordingly. [WIPO Overview 3.0](#) at section 4.3.

The Panel finds that the 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 <tatanishaleer.com> be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: February 16, 2024