

ADMINISTRATIVE PANEL DECISION

Bal Du Moulin Rouge v. Hernan Ulloa, Ulloa y Asociados
Case No. D2023-5145

1. The Parties

The Complainant is Bal Du Moulin Rouge, France, represented by Casalonga Avocats, France.

The Respondent is Hernan Ulloa, Ulloa y Asociados, Ecuador.

2. The Domain Name and Registrar

The disputed domain name <moulinrouge.vip> is registered with GoDaddy.com, LLC (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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 12, 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 19, 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 proceeding commenced on December 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2024. The Response was filed with the Center on January 10, 2024.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on January 17, 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

A. Complainant

The Complainant, founded in 1889, is the operator of the famous MOULIN ROUGE cabaret in Paris, France.

The Complainant is the owner of numerous registrations for the trade mark MOULIN ROUGE, including International registration No. 1016676, with a registration date of June 12, 2009.

B. Respondent

The Respondent is located in Ecuador.

C. The Disputed Domain Name

The disputed domain name was registered on July 6, 2023.

D. Use of the Disputed Domain Name

The Complainant has provided evidence that the disputed domain name has been used to redirect to a website promoting ticket sales to the Complainant's Moulin Rouge show. Currently, the disputed domain name resolves to a "Shopify" page indicating that the store is unavailable.

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.

B. Respondent

The Respondent contended as follows.

The disputed domain name was acquired following a family trip to Europe, where the idea of a business venture in reselling tickets for the Moulin Rouge show emerged, recognizing an unmet demand for sold-out tickets. This entrepreneurial initiative was not intended to replicate the show in another venue or sell fraudulent tickets, but to offer a platform for the resale of official Moulin Rouge tickets.

Although the disputed domain name is similar to the Complainant's trade mark, it is not confusing in light of the intended use for ticket resales.

The disputed domain name was acquired for a legitimate commercial purpose, reselling tickets for the Moulin Rouge show, constituting good faith use of the disputed domain name.

The Respondent refutes any allegations of bad faith. The disputed domain name was acquired without intent to harm the brand or mislead consumers. No fraudulent or deceptive actions have been undertaken.

While the Respondent is open to transferring the disputed domain name, he believes it would be fair and just to be compensated for this transfer. Therefore, the Respondent proposed compensation of EUR 5,000. Additionally, considering the unsuccessful venture, the Respondent seeks reimbursement of EUR 1,704 for the tickets purchased, which remain unsold.

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

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the MOULIN ROUGE mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds 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.

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.

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

The Respondent claims that the disputed domain name was registered and used for a legitimate commercial purpose, that is, for the resale of tickets for the Complainant's show. While panels have recognized that resellers may be found to have rights or legitimate interest in a domain name, in the circumstances of this case, the Panel cannot find in favor of the Respondent as the disputed domain name fails to disclose the Respondent's relationship (or lack thereof) with the Complainant. Therefore, the requirements of the Oki Data test are not met and the Respondent is not to be found as having rights or legitimate interests in the disputed domain name. [WIPO Overview 3.0](#), section 2.8. See also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

The Panel moreover notes the nature of the disputed domain name (being identical to the relevant trade mark), which carries a high risk of implied association. [WIPO Overview 3.0](#), section 2.5.1.

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.

Furthermore, 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.

Considering the well-known status of the Complainant's MOULIN ROUGE trademark and the Respondent's Response acknowledging that the registration of the disputed domain name was intended for resales of tickets for the Complainant's show, the Respondent was aware and targeted the Complainant at the moment of the registration of the disputed domain name, which in the circumstances of the case amounts to bad faith registration. [WIPO Overview 3.0](#), section 3.2.2.

Moreover, considering the lack of rights or interests of the Respondent in the disputed domain name as detailed in section B above, and that the Respondent was using the disputed domain name for the unauthorized resale of tickets to the Complainant's show, is that the Panel finds that the Respondent has used the disputed domain name with the intent to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site in the sense of Policy, paragraph 4(b)(iv).

Lastly, the Panel notes that the Respondent's offer to transfer the disputed domain name to the Complainant for an amount far in excess of his out-of-pocket expenses incurred in registering the disputed domain name also supports a finding that the Respondent has registered the disputed domain name for undue commercial gain.

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 <moulinrouge.vip> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: January 31, 2024