

ADMINISTRATIVE PANEL DECISION

Anglican Community Services v. Anglicare Trust Case No. D2024-0717

1. The Parties

The Complainant is Anglican Community Services, Australia, represented by Dentons Australia Limited, Australia.

The Respondent is Anglicare Trust, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <anglicare.com> (the “Domain Name”) is registered with DomReg Ltd. d/b/a LIBRIS.com (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 16, 2024. On February 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 27, 2024, and March 1, 2024, the Center sent email communications to the Registrar due to the lack of response to the request for registrar verification in connection with the Domain Name. On March 19, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domain Administrator, See Whois privacy services provided by DomainProtect LLC), and contact information in the Complaint. The Center sent an email communication to the Complainant on March 19, 2024, 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 amendment to the Complaint on March 20, 2024.

On March 19, 2024, the Center informed the parties in Russian and English, that the language of the registration agreement for the Domain Name is Russian. On March 20, 2024, the Complainant requested English to be the language of the proceeding. The Respondent submitted request to proceed in Russian on March 29, 2024.

The Center verified that the Complaint together with the amendment 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 18, 2024. The Response was filed with the Center on April 18, 2024.

On May 3, 2024, the Complainant submitted the Supplemental Filing regarding the Response.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on May 6, 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.

On May 30, 2024, the Panel issued Procedural Order No. 1 in English and Russian determining that the Complainant's Supplemental Filing is admitted in the present case and granting the Respondent 5 calendar days, i.e. by June 4, 2024, to comment on the Complainant's Supplemental Filing. The Respondent did not comment on the Complainant's Supplemental Filing.

4. Factual Background

The Complainant is an Australian not-for-profit organization which provides care, services, and accommodation to support people within the Anglican Diocese of Sydney.

The Complainant is the owner of ANGLICARE trademark registrations, including:

- the Australian Trademark Registration for ANGLICARE (word) No. 1839898, registered on April 21, 2017; and
- the Australian Trademark Registration for ANGLICARE (figurative) No. 2133438, registered on November 4, 2020.

The Complainant was also the owner of the Australian Trademark Registration for ANGLICARE (figurative) No. 903104, filed on February 13, 2002, and registered on December 5, 2002 (with priority date of February 13, 2002). This trademark was not renewed and thus, expired.

Moreover, the Complainant claims common law rights in the ANGLICARE trademark. The Complainant and its legal predecessors have used this trademark since as early as April 21, 1999.

The Complainant also operates the domain name <anglicare.org.au> incorporating the ANGLICARE trademark.

The Domain Name was registered on April 16, 2002.

At the time of submitting the Complaint, the Domain Name resolved to a website informing that it is for sale.

As of the date of this Decision, the Domain Name does not resolve to any active website.

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 Domain Name.

First, the Complainant submits that the Domain Name is identical to the trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant contends that the Domain Name was registered and is being used in bad faith.

B. Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the Domain Name.

First, the Respondent submits that the Complainant has not proved that the Domain Name is identical to the trademark in which the Complainant has rights. The Respondent refers to the Complainant's Australian Trademark Registration for ANGLICARE (word) No. 1839898, registered on April 21, 2017, claiming that the Domain Name was registered long before the Complainant acquired rights to this trademark. The Respondent does not agree that the Complainant (including its legal predecessors) has any prior rights to the ANGLICARE trademark.

Second, the Respondent claims that it has rights and/or legitimate interests in the Domain Name. In this regard, the Respondent claims that it has been using the Domain Name since its registrations and bearing the costs associated therewith. Moreover, the Respondent claims to be using the Domain Name for the purpose of an email address. According to the Respondent, the Domain Name constitutes a financial asset. Thus, the Respondent exercises its right to sale the Domain Name.

Third, the Respondent contends that the Domain Name was not registered and is not being used in bad faith. According to the Respondent, the mere coincidence of the date of registration on February 13, 2002 of the Australian Trademark Registration for ANGLICARE (figurative) No. 903104 by the Complainant's legal predecessor and the registration of the Domain Name by the Respondent does not indicate that the Respondent knew about the existence of this trademark and had an intention of selling the Domain Name to the Complainant. Moreover, the Respondent states that there is no evidence that the Respondent offered the Complainant or its competitors the Domain Name at a disproportionate price. Furthermore, the Respondent claims that it is not a competitor of the Complainant and does not offer any goods or services under the ANGLICARE brand.

6. Discussion and Findings

6.1. Preliminary Matters

A. Language of the Proceeding

The language of the Registration Agreement for the Domain Name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requests that the language of the proceeding be English for several reasons. First, the Complainant submits that the Respondent's website contains only English language content. It also refers to USD and the United States of America is the default location on the webform. Second, the Complainant notes that the Registration Agreement is provided on the Registrar's website in both the English and Russian language. Third, the Complainant states that the Registrant's name and contact email use the English language.

The Respondent requests that the language of the proceeding be Russian claiming that it "does not currently have the opportunity to choose English".

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs. See section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that substantial additional expense and delay would likely be incurred if the Complainant had to be translated into Russian. Moreover, the Panel notes that the Respondent filed a substantive Response which addresses the Complainant's contentions. Thus, in the Panel's view, the translation of the Complaint would not make any difference to the outcome of this proceeding. Finally, the Panel notes that the Respondent sent several email communications in English, including the email communication dated March 29, 2024 regarding the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

B. Supplemental Filing

On May 3, 2024, the Center received the Supplemental Filing submitted by the Complainant.

The Panel notes that the Rules provide for the submission of the Complaint by the Complainant and the Response by the Respondent. No express provision is made for supplemental filings by either Party, except in response to a deficiency notification or if requested by the Center or the Administrative Panel.

Paragraphs 10 and 12 of the Rules in effect grant the Panel discretion to determine the admissibility of supplemental filings (including further statements or documents) received from either Party. Thus, it is in the discretion of the Panel to determine whether to consider and/or admit any supplemental filing in rendering its decision.

UDRP panels have repeatedly affirmed that the party's submission of supplemental filing or its request to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some "exceptional" circumstance). See section 4.6 of the [WIPO Overview 3.0](#).

While unsolicited supplemental filings are generally discouraged, and should not consist on a mere rebuttal opportunity (which it is not contemplated within the Rules), the Panel considers that the Complainant's Supplemental Filing is relevant to the case, as it relates to the fact that the Respondent in the Response claims to be an association in existence since the 1990's.

The Complainant in its Supplemental Filing points out the lack of evidence to support the Respondent's claim, the results of several searches claiming to support that the Respondent does not exist within the Russian Federation but that it is a false identity, and further notes that the Response states "The Respondent does not offer any goods or services under the 'anglicare' brand".

The Complainant also showed that it was unable to provide the information contained in the Supplemental Filing in its Complaint, as such claim raised in the Response was new to the Complainant and could not have been reasonably anticipated when the Complaint was filed.

Accordingly, in Procedural Order No. 1 dated May 30, 2024, the Panel determined that the Complainant's Supplemental Filing is admitted in the present case and granted the Respondent 5 calendar days, i.e. by June 4, 2024, to comment on the Complainant's Supplemental Filing. The Respondent did not comment on the Complainant's Supplemental Filing.

6.2. Substantive Matters – Three Elements

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met. At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

Under the first element, the Complainant must establish that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid ANGLICARE trademark registrations. Moreover, the Panel notes that the primary Australian Trademark Registration for ANGLICARE (figurative) No. 903104 had been filed on February 13, 2002, that is before the registration of the Domain Name. It was registered on December 5, 2002 (with priority date of February 13, 2002). However, this trademark registration has been not renewed and has thus expired. Therefore, such trademark registration not being in force at the time of the submission of the Complaint is not sufficient, in itself, to establish the first element under the Policy.

However, the Complainant relies on its common law rights in the ANGLICARE trademark. It is constant that the term “trademark or service mark” as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered trademarks. See section 1.1 of the [WIPO Overview 3.0](#). To establish unregistered or common law trademark rights for purposes of the UDRP, the Complainant must show that its trademark has become a distinctive identifier which consumers associate with the Complainant’s goods and/or services. See section 1.3 of the [WIPO Overview 3.0](#).

The Panel considers that the Complainant demonstrated such acquired distinctiveness. In this regard, the Panel notes that the Complainant or its legal predecessors have used the ANGLICARE trademark since as early as April 21, 1999. The Complainant’s predecessors in title are the Sydney Anglican Home Mission Society Council (SAHMS) and the Anglican Retirement Villages, Diocese of Sydney (ARV). Prior to April 27, 2016, SAHMS operated and was known as ANGLICARE, having operated as ANGLICARE since as early as April 1999. On April 27, 2016, SAHMS merged with ARV to form the Complainant. All of the assets previously held by SAHMS, including trademarks and related rights, were transferred to the Complainant. The Panel concludes that the Complainant has common law trademark rights in the ANGLICARE trademark for purposes of the UDRP.

The Domain Name incorporates the Complainant’s trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to that trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The Top-Level Domain “.com” in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element test. See section 1.11.1 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is identical to the Complainant's ANGLICARE trademark for purposes of the Policy. Thus, the Complainant has satisfied the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element, the Complainant must prove that the Respondent has no rights or legitimate interests in the Domain Name.

The Respondent may establish a right or legitimate interest in the Domain Name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made preparations to use the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services prior to the dispute; or
- (ii) that it is commonly known by the Domain Name, even if it has not acquired any trademark rights; or
- (iii) that it is making a legitimate noncommercial or fair use of the Domain Name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Panel considers that the Respondent has not submitted sufficient evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence on record that the Complainant's ANGLICARE unregistered trademark predates the Respondent's registration of the Domain Name. There is no evidence in the case record that the Complainant has licensed or otherwise permitted the Respondent to use the ANGLICARE trademark or to register the Domain Name incorporating this trademark.

There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name. Although the Respondent claims in its Response that it is the Russian public association Anglicare Trust, the Respondent does not provide any evidence to support this submission. Furthermore, the Panel notes the Complainant's claim that the Domain Name resolved to a website identical to the one in *Mozilla Foundation and Mozilla Corporation v. Whois privacy services provided by DomainProtect LLC / Exide Ltd.*, WIPO Case No. [D2018-0720](#). While the respondent in such case had a name different to the Respondent, the Panel notes that both respondents were located in the Russian Federation, and the Panel has visited the mentioned website in Web Archive, and has noted that the archived version of 2016 was almost identical to the website at the Domain Name, which would support the Complainant's contention that the identity provided for the registration of the Domain Name "Anglicare trust" corresponds to a fake identity.

It results from the evidence on record that the Respondent does not make use of the Domain Name in connection with a bona fide offering of goods or services, nor does it make a legitimate noncommercial or fair use of the Domain Name. Even though the Respondent claims that it has been using the Domain Name since its registrations, the Respondent has not provided any evidence to support this claim. On the contrary, the Complainant proved that the Domain Name has never been used for any purpose other than offering to sell this domain. Prior to submitting the Complaint, as well as at the time of its submission, the Domain Name resolved to a website informing that the Domain Name is for sale at prices which the Panel considers to be greater than the likely out-of-pocket expenses directly related to the Domain Name. While the Respondent claims that the Domain Name is an asset, and it seems to imply that the reason for its offer for sale was due to the Respondent's decreased activity, the Panel notes that such an offer for sale would not give rise to rights or legitimate interests under the Policy if the Domain Name was registered targeting the Complainant. Although given the opportunity, the Respondent did not provide any evidence to support its existence as an entity under the name "Anglicare Trust", evidence that the Respondent should be capable of providing quite easily. On the other hand, the Complainant has provided evidence of its activity since 1999, and in the circumstances of this case the Panel finds more likely than not that the Respondent registered the

Domain Name with the Complainant in mind. Therefore, such holding of the Domain Name does not confer rights or legitimate interests on the Respondent.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's prima facie case. The Panel concludes that the Complainant has also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under the third element, the Complainant must prove that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1 of the [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's unregistered rights in the ANGLICARE trademark predate the registration of the Domain Name. The Panel finds that the Respondent was probably aware of the Complainant at the time of the Domain Name registration. This finding is supported by the use of the ANGLICARE trademark by the Complainant since as early as April 1999, and the inherent distinctiveness of this trademark which is identical to the Domain Name.

Furthermore, the Complainant submitted evidence that the Domain Name has never been used for any purpose other than offering to sell this Domain Name at a price ranging from USD 1,000 to USD 2,910. In the circumstances of this case, the Panel finds more likely than not that the Respondent registered the Domain Name primarily for the purpose of selling the Domain Name for valuable consideration in excess of the documented out-of-pocket costs directly related to the Domain Name.

As for the disclaimer on the website connected to the Domain Name, the Panel finds that in circumstances where the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name does not consist of a dictionary term but of a coined term used by the Complainant, the mere existence of this disclaimer cannot cure the Respondent's bad faith. The disclaimer as in the present case is disingenuous because it is most improbable that the Respondent is not aware that any commercial use of the Domain Name would interfere with the Complainant's rights, and that the Domain Name creates a risk of likelihood of confusion with the Complainant's trademark. See *Mozilla Foundation and Mozilla Corporation v. Whois privacy services provided by DomainProtect LLC / Exide Ltd.*, WIPO Case No. [D2018-0720](#).

For the reasons discussed above, the Panel finds that the Complainant has satisfied the requirements under paragraph 4(a)(iii) of the Policy.

D. Reverse Domain Name Hijacking

The Respondent submits in its Response that the Complaint was brought in an attempt at Reverse Domain Name Hijacking.

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. See section 4.16 of the [WIPO Overview 3.0](#), section 4.16.

Given that the Panel found the Complaint to be successful, the Respondent's submission regarding the Complainant's Reverse Domain Name Hijacking attempt is considered to be unfounded.

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, <anglicare.com>, be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: June 5, 2024