

ADMINISTRATIVE PANEL DECISION

Bal du Moulin Rouge v. David Millar
Case No. D2024-0877

1. The Parties

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

Respondent is David Millar, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <katiesmoulinrouge.com> 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 February 28, 2024. On February 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 1, 2024, 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 (GDPR Masked), and contact information in the Complaint. The Center sent an email communication to Complainant on March 5, 2024, 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 March 8, 2024.

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 March 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2024. Respondent did not submit any formal response. The Center still received various informal email correspondences sent by Respondent, e.g. on March 5, 2024, March 8, 2024, March 14, and April 15, 2024. Accordingly, the Center notified the Parties with commencement of Panel Appointment Process on April 8, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on April 15, 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

Complainant is a company organized under the laws of France operating the so-called “Moulin Rouge” theatre, a famous tourist attraction in Paris, offering musical dance entertainment for visitors from around the world.

Complainant has provided evidence that it is the registered owner of various trademarks relating to its brand MOULIN ROUGE, including, but not limited to, the following:

- word mark MOULIN ROUGE, International registration with registration number: 1016676, registration date: June 12, 2009, status: active;
- word mark MOULIN ROUGE, National French registration with registration number: 1311105, registration date: May 3, 1983, status: active.

Moreover, Complainant has demonstrated to own various domain names relating to its MOULIN ROUGE trademark, inter alia, since 1998 the domain name <moulin-rouge.com> which resolves to Complainant’s official website at “www.moulin-rouge.com”, promoting Complainant’s musical dance entertainment services internationally.

Respondent, according to the disclosed Registrar’s and WhoIs information for the disputed domain name, is located in the United Kingdom. The disputed domain name was registered on May 9, 2012. By the time of the rendering of this Decision, the disputed domain name does not resolve to an active website, but has been suspended. Complainant, however, has demonstrated that, at some point before the filing of the Complaint, the disputed domain name resolved to a website at “www.katiesmoulinrouge.com”, promoting erotic content, escort, and sex massage services under the heading “Katies Moulin Rouge”, with the term “Moulin Rouge” also being used on its own.

Complainant requests that the disputed domain name be transferred to Complainant.

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. Notably, Complainant contends that a market survey conducted in 2018 recognizes Complainant’s “Moulin Rouge” theatre as remaining, by far, the leading permanent cabaret/music-hall venue in all countries, and that Complainant’s MOULIN ROUGE trademark has incontestably acquired worldwide notoriety.

Complainant submits that the disputed domain name is confusingly similar to Complainant’s MOULIN ROUGE trademark, as it reproduces the latter entirely, added by the first name “Katies” (possibly understood as “Katie’s”). Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has no relationship whatsoever with Respondent and no license, permission or authorization to use the MOULIN ROUGE trademark was ever granted to Respondent by Complainant, (2) the disputed domain name does not contain Respondent’s name, and (3) the disputed domain name (at some point) resolved to a website including erotic content and promoting erotic content, escort and sex massage services that are highly detrimental to Complainant’s reputation and cannot be considered fair use of the disputed domain name as it misleadingly diverts consumers searching for

Complainant's products and services. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's prior MOULIN ROUGE trademark was notably registered long before the disputed domain name and is well-known, which is why Respondent necessarily had knowledge of such trademark when registering the disputed domain name, and (2) the disputed domain name redirects Internet users to a website including erotic content and promoting erotic content, escort and sex massage services which does not correspond to the valuable reputation of Complainant's MOULIN ROUGE trademark.

B. Respondent

Respondent did not file a formal Response, but sent various informal email correspondences to the Center, e.g. on March 5, 2024, March 8, 2024, March 14, 2024, and April 15, 2024, indicating that "the property was sold over 10 years ago" and that Respondent was "open to changing the domain if that is what is being asked for".

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's formal default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a formal Response as it considers appropriate.

A. Identical or Confusingly Similar

First, 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 MOULIN ROUGE 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 the MOULIN ROUGE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Moreover, the entirety of the MOULIN ROUGE trademark is reproduced within the disputed domain name, added by the term "katies". Accordingly, the disputed domain name is confusingly similar to Complainant's MOULIN ROUGE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms (here, the term "katies") 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 Complainant's MOULIN ROUGE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel, therefore, finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Second, 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.

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.

In particular, Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its undisputedly famous MOULIN ROUGE trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent’s name somehow corresponds with the disputed domain name, and Respondent does not appear to have any trademark rights associated with the term “Moulin Rouge” on its own. Finally, the disputed domain name, which reproduces Complainant’s famous MOULIN ROUGE entirely, resolved at some point in the past to a commercially active website at “www.katiesmoulinrouge.com”, promoting erotic content, escort, and sex massage services under the heading “Katies Moulin Rouge”, with the term “Moulin Rouge” also being used on its own. Given the undisputed fame of Complainant’s MOULIN ROUGE trademark, it is more likely than not that Respondent was well aware of such trademark when registering the disputed domain name. Moreover, Respondent has brought nothing forward (neither by means of a formal response nor in its informal email correspondence with the Center) why it needed to rely on Complainant’s famous MOULIN ROUGE trademark as part of the disputed domain name if not to somehow profit from the reputation connected to such trademark for some unfair advantage to Respondent in terms of commercial gain. To the very contrary, Respondent was “open to changing the domain if that is what is being asked for”. Consequently, such use of the disputed domain name neither qualifies as bona fide nor as legitimate noncommercial or fair within the meaning of paragraph 4(c) of the Policy.

The Panel, therefore, finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Finally, 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.

The facts to this case allow to conclude that Respondent was well aware of Complainant’s rights in the MOULIN ROUGE trademark when registering the disputed domain name and that the latter is clearly directed thereto. Not only enjoys Complainant’s MOULIN ROUGE trademark reputation and fame globally. Also, the term “Moulin Rouge” – as it is reflected in the disputed domain name – lacks any direct or indirect connection to pornographic content as it had been put in place at some point in the past by Respondent on the website under the disputed domain name. Finally and again, the Panel recognizes that Respondent has put nothing forward and no evidence to support (neither by means of a formal response nor in its informal email correspondence with the Center) why it needed to rely on Complainant’s famous MOULIN ROUGE trademark as part of the disputed domain name if not to somehow profit from the reputation connected to such trademark for some unfair advantage to Respondent in terms of commercial gain. Such circumstances are clear enough indications for this Panel that Respondent, more concretely, intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant’s famous MOULIN ROUGE trademark as to the source, sponsorship, affiliation or endorsement

of Respondent's website, and so serve as evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

The Panel finds, therefore, finds that Complainant has established the third element of the Policy, too.

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, <katiesmoulinrouge.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: April 29, 2024