

ADMINISTRATIVE PANEL DECISION

The University of Houston System v. Danelle Osbourne
Case No. D2024-1126

1. The Parties

Complainant is The University of Houston System, United States of America (“United States” or “U.S.”), represented by Holland & Knight, LLP, United States.

Respondent is Danelle Osbourne, United States.

2. The Domain Name and Registrar

The disputed domain name <houstonpublicradio.net> (the “Domain Name”) is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2024. On March 15, 2024, the Center transmitted by email to the Registrar a 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 (Data Redacted) and contact information in the Complaint. The Center sent an email communication to Complainant on March 19, 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 19, 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 21, 2024. In accordance with the Rules, paragraph 5, the due date for the response was April 10, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 11, 2024.

The Center appointed John C. McElwaine as the sole panelist in this matter on April 24, 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 public higher educational institution in Houston, Texas. Relevant to this matter, Complainant is the owner of the following United States trademark registrations:

- HOUSTON PUBLIC RADIO, U.S. Reg. No. 3,047,089, registered on January 17, 2006, in Classes 16, 38 and 41; and
- HOUSTON PUBLIC RADIO, U.S. Reg. No. 4,430,348, registered on November 12, 2013, in Classes 16, 21, 25, 38 and 41.

(collectively, these trademark rights are referred to as the "HOUSTON PUBLIC RADIO Mark").

Complainant, via its service Houston Public Media, owns the domain name <houstonpublicradio.org>, which it registered in 2020.

On August 29, 2023, Respondent registered the Domain Name. At the time of filing the Complaint, the Domain Name resolved to an active website titled "Houston Public Radio."

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

As background, Complainant asserts that is a renowned educational institution known for its diverse student body, its research and a radio station that it operates known as Houston Public Radio. Complainant asserts that it has well-established trademark rights in the HOUSTON PUBLIC RADIO Mark with over 70 years of broadcasting history, engaging millions annually with content ranging from news to arts and education, including shows from NPR and PBS.

With respect to the first element of the Policy, Complainant alleges that despite Complainant's well-documented rights in the HOUSTON PUBLIC RADIO Mark, Respondent registered the identical Domain Name that is used to offer services strikingly similar to those services rendered by Complainant under its HOUSTON PUBLIC RADIO Mark.

With respect to the second of the Policy, Complainant asserts that (1) Respondent has no rights or legitimate interest in the Domain Name, (2) Respondent is not commonly known by the Domain Name, and (3) Complainant has not authorized Respondent to use the HOUSTON PUBLIC RADIO Mark. Instead, Complainant contends that Respondent has intentionally attempted to attract for commercial gain, Internet users to Respondent's website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of Respondent's website and of services on Respondent's website. As such, Complainant asserts Respondent does not have a bona fide offering of goods or services, or legitimate noncommercial or fair use under this name. Instead, Respondent's use of the Domain Name appears purely opportunistic, aiming to attract users by mimicking the HOUSTON PUBLIC RADIO Mark.

With respect to the third element of the Policy, Complainant asserts that the Domain Name is confusingly similar to other domain names it uses and its HOUSTON PUBLIC RADIO Mark. In addition, Complainant

claims to have made attempts to resolve the issue by contacting Respondent directly through email and a formal cease and desist letter, requesting the relinquishment of the Domain Name. However, there has been no response or acknowledgment from Respondent or the associated hosting provider, further indicating bad faith in the registration and use of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Even though Respondent did not formally reply to the Complaint, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

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

Because of the absence of a formal Response, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kasso Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel's findings on each of the above cited elements are as follows.

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 Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7. Here, Complainant has shown valid trademark rights by virtue of its trademark registrations containing the HOUSTON PUBLIC RADIO Mark. [WIPO Overview 3.0](#), section 1.2.1. In addition, the Domain Name is identical to the HOUSTON PUBLIC RADIO Mark. Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

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.

In this matter, Complainant contends that Respondent is not authorized to register the Domain Name, nor does Respondent have any affiliation, association or connection with Complainant. Rather, Complainant contends Respondent is using the Domain Name to resolve to a website entitled "Houston Public Radio" that

contains content confusingly similar to Complainant's services. Although properly notified by the Center, Respondent failed to submit any response to counter this point. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic.A.S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complaint, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the disputed domain name. See *AREVA v. St. James Robyn*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#).

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the 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 Domain Names such as those enumerated in the Policy¹ or otherwise.

As an initial matter, there is no evidence that Respondent is commonly known by the Domain Name and is, instead, known as Danelle Osbourne. The Panel therefore finds, based on the record and the lack of evidence otherwise, that Respondent is not commonly known by the Domain Names. See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#) ("the Panel notes that the respondent's name is 'Bestinfo' and that it can therefore not be 'commonly known by the Domain Name.'")

The Panel finds that the website displayed at the Domain Name gives the false impression that it is affiliated with or related to Complainant, which is not the case. Prior panels deciding under the UDRP have held that such use of a domain name cannot be a "bona fide offering of goods or services" and is not "fair use of the domain name." See *Microsoft Corporation v. Microsof.com aka Tarek Ahmed*, WIPO Case No. [D2000-0548](#) ("by using a domain name and establishing a website deliberately designed to confuse Internet users and consumers regarding the identity of the seller of the goods and services, Respondent has not undertaken a bona fide or good faith offering of the goods and services."); see *Hulu, LLC v. Helecops, Vinod Madushanka*, WIPO Case No. [D2016-0365](#) (finding that an infringing website operating under the name "HuluMovies" does not entail a bona fide offering of services in the sense of paragraph 4(c)(i) of the Policy, nor a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii), without intent for commercial gain to misleadingly divert consumers or to tarnish the HULU mark). The Panel notes that the contentions by Complainant about the website resolving at the Domain Name have not been rebutted by Respondent in this proceeding.

The Panel finds that Respondent does not have rights or legitimate interests in the Domain Names and that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can be found where a respondent "knew or should have known" of a complainant's trademark rights and nevertheless registered a domain name in which it had no right or legitimate interest. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). As detailed above, Respondent registered the Domain Name which is confusingly similar to the HOUSTON PUBLIC RADIO Mark. There is no explanation

¹ The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which a respondent could demonstrate rights or legitimate interests in a contested domain name: "(i) before any notice to you of the dispute, your use of, or demonstrable 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; or (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or (iii) you are 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 or service mark at issue."

for Respondent to have chosen to register the Domain Name other than to intentionally trade off the goodwill and reputation of Complainant's trademark or otherwise create a false association with Complainant. With no response from Respondent, this claim is undisputed. It is important to note that Complainant's U.S. Reg. No. 4,430,348 was registered under a claim of acquired distinctiveness more than 9 years before the registration of the Domain Name.

Also as discussed herein, Respondent registered the Domain Name and linked it to a website offering services in competition with Complainant. With no explanation from Respondent to justify or explain these actions, this amounts to bad faith use of the Domain Names by Respondent. See *Identigene, Inc. v. Genetest Labs*, WIPO Case No. [D2000-1100](#) (finding bad faith where the respondent's use of the domain name at issue to resolve to a website where similar services are offered to Internet users is likely to confuse the user into believing that the complainant is the source of or is sponsoring the services offered at the site); *MathForum.com, LLC v. Weiguang Huang*, WIPO Case No. [D2000-0743](#) (finding bad faith under paragraph 4(b)(iv) of the Policy where the respondent registered a domain name confusingly similar to the complainant's mark and the domain name was used to host a commercial website that offered similar services offered by the complainant under its mark).

In addition, Panels have previously held that failure to respond to a cease and desist letter regarding alleged trademark infringement involving a domain name registration in appropriate circumstances can support an inference that the respondent was aware that it has no rights or legitimate interests in the domain name(s) at issue, and that the domain name(s) were registered and used in bad faith. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). Complainant sent a cease and desist letter to Respondent and has not received a substantive response. Accordingly, Respondent's failure to respond to Complainant's pre-complaint allegations is further evidence to support an inference of Respondent's bad faith.

As detailed above, the Panel finds on the record before it that Respondent's intention in registering the Domain Name was to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with the HOUSTON PUBLIC RADIO Mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. Thus, the Panel holds that Complainant has met its burden of providing sufficient evidence that Respondent registered and is using the Domain Name in bad faith under paragraph 4(b)(iv) of the Policy. For these reasons, the Panel holds that Complainant has met its burden of showing that Respondent registered and is using the Domain Name in bad faith under paragraph 4(a)(iii) 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 Domain Name, <houstonpublicradio.net>, be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: May 8, 2024