

## **ADMINISTRATIVE PANEL DECISION**

Goop Inc. v. Sean McDonald  
Case No. D2024-1959

### **1. The Parties**

The Complainant is Goop Inc., United States of America (“United States”), represented by Frost Brown Todd LLC, United States.

The Respondent is Sean McDonald, United States, represented by Duff Law, United States.

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

The disputed domain name <mushroomgoop.com> 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 May 10, 2024. On May 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 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 amended Complaint on May 22, 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 the Respondent of the Complaint, and the proceedings commenced on May 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 17, 2024. The Response was filed with the Center on June 18, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on June 20, 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.

The Complainant submitted a supplemental filing on June 24, 2024, as described below.

#### 4. Factual Background

The Complainant is a corporation established under the laws of the State of Delaware, United States, with a principal place of business in Santa Monica, California, United States. The Complainant was founded in 2008 by Oscar-winning actress and entrepreneur Gwyneth Paltrow as a “lifestyle company” promoting fashion, beauty, health and wellness, home décor, and food products and services, accompanied by podcasts (“The goop Podcast”) and a streaming television show on the Netflix platform (“The Goop Lab”). The Complainant operates six retail stores as well as an ecommerce website at “www.goop.com” and multiple social media sites. The record includes substantial evidence of the Complainant’s advertising and brand recognition in the United States, where the Respondent is located, including media coverage on popular television shows such as Saturday Night Live and The Late Show with Stephen Colbert.

The Complainant holds several United States trademark registrations for GOOP as a standard character mark, including the following:

Mark	Registration Number	Registration Date	Goods or Services/Class
GOOP	4946429	April 26, 2016	35: Retail store services featuring a wide variety of consumer goods; providing consumer product information via the Internet or other communications networks; computerized on-line ordering services featuring a wide variety of consumer goods.
GOOP	5172297	March 28, 2017	3: Non-medicated skin care preparations, creams, lotions, cleansers, masks and oils, etc.
GOOP	5232763	June 27, 2017	3: Perfume, cologne, eau de toilette. 5 : vitamins, dietary supplements 8: Cutlery, namely, knives 14: jewelry 18: handbags, luggage 20: pillows 21: pillows 24: bedding, namely, pillow cases, kitchen linens

The Registrar reports that the disputed domain name was registered on March 28, 2024, in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Sean McDonald, an individual listing a postal address in the United States. The registration shows no organization but gives a contact email address using a domain name associated with the website at “www.cdbliving.com”, a site advertising CBD (cannabidiol) products with ingredients derived from hemp plants. The Respondent is described on that website as the Chief Operating Officer at CBD Living. The Response further identifies the Respondent as the CEO of Melting Forest, Inc. (“Melting Forest”), a corporation organized under the laws of the State of Delaware, United States, on August 23, 2023, with a website at “www.meltingforest.com” selling “mushroom-infused gummies, Energy Drinks and D-Stress drinks as natural, holistic solutions”.

The disputed domain name resolves to a “free parking” landing page hosted by the Registrar, displaying a button to “Get this Domain” and third-party, pay-per-click (“PPC”) advertising links for items such as edible mushrooms and mushroom growing kits.

## 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 is confusingly similar to the Complainant’s registered GOOP trademark, which it incorporates in its entirety. The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name, as it has no permission to use the Complainant’s mark and is not conducting business under a corresponding name. The Complainant infers that the Respondent selected the disputed domain name in an effort to “profit from the resulting traffic misdirected” to a domain confusingly similar to the Complainant’s well-known GOOP mark. The Complainant argues that the Respondent’s use of a domain privacy service is further evidence of an intent to make it difficult for the trademark owner to protect its trademark. As the disputed domain name has been used to date only for a PPC landing page, the Complainant cites the “passive holding” doctrine first enunciated in *Telstra Corporation Limited v. Nuclear Marshmallows (“Telstra”)*, WIPO Case No. [D2000-0003](#), contending that this is such a case where it is not possible to conceive of any good faith use of the disputed domain name by the Respondent, as the disputed domain name was registered long after the GOOP mark had become a well-known trademark associated with the Complainant.

The Complainant cites *Goop Inc. v. 雷绳富 (lei sheng fu)*, WIPO Case No. [D2023-4736](#), where the panel found that the domain name <goopgenbeauty.com> was confusingly similar to the same Complainant’s GOOP mark. The respondent in that proceeding did not appear and had not associated the domain name with a website, although the respondent had set up Email Exchanges (“MX”) records in preparation for using the domain name emails. The panel relied on the *Telstra* “passive holding” doctrine to find bad faith, noting the “distinctiveness or reputation” of the mark and the composition of the domain name (the Complainant holds trademark registrations for GOOP, GOOPGENES, and GOOP BEAUTY, all incorporated in the domain name).

In its supplemental filing, the Complainant replies to the Respondent’s arguments concerning confusing similarity on the first element of the Complaint, noting that both parties sell wellness products. The Complainant emphasizes with respect to the second element that the disputed domain name does not correspond to the name of the Respondent’s business, “Melting Forest”. The Complainant observes regarding the third element that UDRP panels have rejected the argument that a registrant is not responsible for PPC advertising automatically displayed by a registrar or host service. Moreover, the Complainant considers the Respondent’s denial of prior awareness of the Complainant’s mark implausible. The Complainant refers to the Respondent as a competitor and attaches Internet search results specifically for the term “mushroom goop” that include media articles about the healing and psychedelic effects of mushrooms, prominently mentioning the Complainant’s “Goop Lab.” The Complainant concludes as follows:

“While it is difficult to comprehend how Respondent has never heard of Complainant, who also resides in California and is a strong proponent of wellness and supplement products, Complainant’s GOOP marks were well established by the time Respondent, an apparent competitor, registered the [disputed] domain name, providing Respondent with constructive notice of its registered rights to the GOOP Mark.”

## B. Respondent

The Respondent contends that the Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name. The Respondent contends that the disputed domain name is not confusingly similar to the Complainant's GOOP mark, as "goop" is a dictionary word (meaning a viscous or sticky substance) used by and indeed trademarked by other companies. The Respondent observes that the United States Patent and Trademark Office ("USPTO") refused the Complainant's first registration application because of the multitude of GOOP and GOOP-formative marks. The Complainant subsequently argued successfully to the USPTO that this fact indicated that consumers have learned to distinguish between even minor differences between GOOP-related source identifiers. The Respondent contends that this also should be true for the Respondent's coined, compound term "mushroomgoop", formed of two dictionary words suggestive of the mushroom-infused products sold by the Respondent's company Melting Forest.

The Respondent asserts a legitimate interest in registering the disputed domain name "as part of a nascent business development strategy" for the Respondent's Melting Forest business incorporated in August 2023, as described in the Respondent's Declaration attached to the Response. The Respondent has used the domain name <meltingforest.com> for that business and also registered two other domain names for the business, <mushroomblast.com> and <meltingforce.com>, which, like the disputed domain name, have not yet been developed. The Respondent asserts that the Registrar parked the disputed domain name with PPC advertising without the Respondent's involvement and that the Respondent has made no use of the disputed domain name to date but "has a good faith plan to use it in connection with" the Melting Forest business. The Respondent denies prior knowledge of the Complainant or its marks and any intent to "free ride on Complainant's goodwill or snatch up a domain to sell to Complainant".

## 6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following:

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

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

### 6.1. Preliminary Matter: Supplemental Filings

Neither the Rules nor the Supplemental Rules make provision for supplemental filings, except at the request of the panel (see Rules, paragraph 12). Paragraph 10 of the Rules enjoins the panel to conduct the proceeding "with due expedition". Therefore, UDRP panels are typically reluctant to countenance delay through additional rounds of pleading and normally accept supplemental filings only to consider material new evidence or provide a fair opportunity to respond to arguments that could not reasonably have been page 4 anticipated. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 4.6.

Before the filing of the Response, the Complainant did not know of the Respondent's Melting Forest business or the Respondent's asserted plans for using the disputed domain name in connection with that business. Therefore, the Panel accepts the Complainant's supplemental filing for the purpose of addressing these facts and related arguments.

## **6.2. Substantive Issues**

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The Parties will note that this differs from the more granular approach to confusing similarity under national trademark laws, which often consider the details of specific markets and classes of goods and services, as the Parties have debated. The standing (or threshold) test for confusing similarity under the Policy in contrast involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark (the registered GOOP mark) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the first element Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "mushroom") may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 is not known by a corresponding name. While the Respondent is conducting a related business, the Respondent has not used the disputed domain name for that business and has claimed but has not submitted evidence of "demonstrable preparations" to do so (Policy paragraph 4(c)(i), such as a business plan, investment in website preparation, or even an interim redirection to the Respondent's existing Melting Forest website.

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

### **C. Registered and Used in Bad Faith**

While the Respondent has not demonstrated sufficient preparations to use the disputed domain name legitimately in support of his Melting Forest business, and so fails on the second element, the Complainant must nevertheless establish the third element, bad faith. For the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy describes 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. One of these (paragraph 4(b)(iv)) is attracting Internet users for commercial gain to other sites by intentionally

creating a likelihood of confusion with the Complainant's mark, which occurs when the disputed domain name incorporating the mark is parked on a landing page with PPC advertising. The Respondent protests that this is done by the Registrar and not for the Respondent's gain, but this is irrelevant. Other parties profit from the misdirection, and the Respondent retains control and remains responsible under the registration agreement for the use of the disputed domain name in a manner that does not infringe on the rights of others. See [WIPO Overview 3.0](#), section 3.5.

However, establishing bad faith in the context of this case requires more, and given the claims advanced by the Respondent, necessarily means demonstrating the probability that the Respondent selected the disputed domain name with an intent to exploit the Complainant's GOOP mark. The Respondent in his signed declaration unequivocally states that he was unaware of the Complainant or its mark:

"I did not know that Complainant or its asserted trademarks existed until I received a notice that Complainant had initiated this proceeding ..."

In a UDRP proceeding, without the benefit of witness examination and cross-examination, there is limited scope for weighing the credibility of sworn statements, and the case must be judged on the available written record and websites, with the burden of proof resting on the Complainant. The Complainant demonstrates that its mark has achieved significant renown, including publicity in connection with Goop Lab testing of mushroom-based products, although it does not appear that such products feature among its commercial offerings (a few mushroom dinner recipes can be found on the Complainant's website). It is not clear that the Parties are what would ordinarily be considered as "competitors"; the Complainant does not point to any products in its lineup that are similar to the Respondent's mushroom-infused drinks. The entire field of health and wellness products is extensive, even if one were to focus only on California companies, where both of the Parties are headquartered. Thus, the Respondent's denial of prior awareness is not entirely implausible.

Unlike the factual context in *Goop Inc. v. 雷绳富 (lei sheng fu)*, cited above, where the domain name at issue was comprised of three names that featured in three different trademarks registered by the Complainant, the disputed domain name here consists of two dictionary words that are relevant to the Respondent's business of producing mushroom-infused health drinks. Hence, this is also not a case that suggests from the composition of the disputed domain name that it "must have been" selected with knowledge of the Complainant's distinctive mark; there is certainly another conceivable motivation for the choice of the disputed domain name and for its ultimate use. This would also militate against applying the *Telstra* passive holding doctrine to infer bad faith in the absence of an active website. And unlike *Goop Inc. v. 雷绳富 (lei sheng fu)*, where no respondent appeared to defend its choice, the Respondent here has submitted a Response supported by a sworn declaration and has an active, relevant business.

The Complainant also argues that the Respondent had "constructive notice" of its mark, a concept found in United States trademark law, which is sometimes mentioned in panel decisions involving United States parties. This concept has limited application in the UDRP context, in some UDRP decisions involving United States parties and United States trademark registrations, where the reference typically supplements rather than replaces an assessment of the strength and distinctiveness of the mark in question, effectively underlining the likelihood of actual notice in cases where a registered trademark is particularly distinctive and well-established. Even if the Panel applied such doctrine in the case at hand, given the descriptive nature of the terms comprising the disputed domain name which correspond to a business and other domain names held by the Respondent, the Panel is unwilling to accept that such knowledge (if it in fact existed) would categorically mean that the Respondent would necessarily be acting in bad faith in registering the disputed domain name.

On balance, the evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark. It is again noted that this decision is based on the limited record provided for by the exchanges foreseen under the UDRP and additional evidence and examination in a court may or may not lead to the same outcome.

The Panel finds the third element of the Policy has not been established.

## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/W. Scott Blackmer/*

**W. Scott Blackmer**

Sole Panelist

Date: July 4, 2024