

ADMINISTRATIVE PANEL DECISION

The Arts Council of England v. Alena Marley, Artstation
Case No. D2024-2011

1. The Parties

The Complainant is The Arts Council of England, United Kingdom, represented by Fieldfisher LLP, United Kingdom.

The Respondent is Alena Marley, Artstation, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <artsmark.org> is registered with Atak Domain Hosting Internet ve Bilgi Teknolojileri Limited Sirketi d/b/a Atak Teknoloji (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 14, 2024. On May 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 17, 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 (Artstation) 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 amendment to the Complaint on May 17, 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 May 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 18, 2024.

The Center appointed Antony Gold as the sole panelist in this matter on June 21, 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

The Complainant is an English entity, established by Royal Charter in order to champion and develop art and culture projects throughout England. One of its projects is called “Artsmark”, which empowers schoolteachers with the skills they need to embed arts, culture and creativity in the school curriculum. Schools who have an exceptional commitment to creativity can be rewarded with the “Artsmark award”. Since 2015, over 7,000 schools have registered for Artsmark, and currently around 4,000 schools are actively engaged with it.

The Complainant is the owner of the domain name <artsmark.org.uk>, which resolves to a website promoting the Artsmark project and offering support and resources to its members. It is also the owner of word and figurative marks for ARTSMARK, including;

- United Kingdom trade mark, registration number UK 00003592883, in classes 9, 16, 35, 36, 41 and 42, for ARTSMARK (word only) registered on June 18, 2021;
- United Kingdom trade mark, registration number UK 00915008031 for ARTSMARK (figurative) in classes 9, 16 and 41, registered on June 3, 2016. This mark is used as a header on each page of the Complainant’s website.

The disputed domain name was registered on March 22, 2024. It resolves to a website prominently headed “Artsmark” using a stylization which is identical or highly similar to the Complainant’s figurative ARTSMARK mark. Menu bar items include “Art”, “Gaming”, “Memberships” and “PFPs”. Various art paintings and other images are displayed. The “Art” menu invites Internet users to “Immerse yourself in the world of digital art with our NFT platform’s dedicated art category. Discover and collect one-of-a-kind digital artworks created by talented artists from around the globe.” From March 29, 2024, the Complainant began to receive communications from members of the public asking whether the Respondent’s website was linked with the Complainant and/or to advise the Complainant that the Respondent’s website was a scam.

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 identical to a trade mark in which it has rights. The disputed domain name entirely reproduces its ARTSMARK mark, which has no inherent meaning and is therefore distinctive. Moreover, the disputed domain name is also highly similar to the Complainant’s domain name <artsmark.org.uk>;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. The website to which the disputed domain name resolves is being used to conduct fraudulent activity in that it has been designed to look like that of the Complainant and uses its figurative trade mark for ARTSMARK. The complaints the Complainant has received from members of the public, who were misled into believing that the Respondent’s website was connected with the Complainant, establish that the disputed domain name is not being used in connection with a bona fide offering of goods and services. Moreover, the Complainant has never licensed or otherwise authorized the Respondent to use ARTSMARK nor to register any domain name including its mark;

- the disputed domain name was registered and is being used in bad faith. Given the distinctive nature of ARTSMARK and the activities undertaken by the Respondent, it is highly likely that the Respondent had actual notice of the Complainant's trade marks as at the date of registration of the disputed domain name. This suggests that the Respondent acted with opportunistic bad faith in registering it for the purposes of illegitimate use. Moreover, by its use of the disputed domain name the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by using a domain name which is likely to cause confusion with the Complainant's mark as to the affiliation or endorsement of the Respondent's website. Moreover, the use of the disputed domain name for the purposes of an apparent scam is in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that a complainant proves each of the following three elements in relation to a domain name in order to succeed in its complaint:

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

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name; see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has provided details of its trade mark registrations for ARTSMARK, two examples having been provided above. The Panel therefore finds the Complainant established its rights in this mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1.

As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".org" in respect of the disputed domain name, is usually disregarded for the purposes of the first element. The Complainant's mark is reproduced in full within the disputed domain name, with no additional matter.

Accordingly, the Panel therefore finds that the disputed domain name is identical to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances by which a respondent may demonstrate rights or legitimate interests in a domain name. Whilst 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 impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element; see the [WIPO Overview 3.0](#), section 2.1.

Having reviewed the 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 has not rebutted the 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, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services; see paragraph 4(c)(i) of the Policy and the [WIPO Overview 3.0](#), section 2.2. Educational institutions, and others familiar with the activities of the Complainant, who visit the Respondent’s website are apt to believe from the identicality of the disputed domain name to the Complainant’s mark, the website content and the Respondent’s use of the Complainant’s figurative mark that the Respondent’s website is a commercial venture of the Complainant and is either operated by the Complainant or by a duly authorized third party. Irrespective of whether the Respondent is offering any actual goods or whether (as seems more likely) its entire operation is a scam, such piggy-backing on the Complainant’s reputation cannot comprise a bona fide offering of goods and services. Previous UDRP panels have held that the use of a domain name for illegal activity, impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent; see the [WIPO Overview 3.0](#), section 2.13.1 and, by way of example, *Zions Bancorporation, N.A. v. George Gillespie*, WIPO Case No. [D2022-3197](#);
- there is no evidence in the record that the Respondent has been commonly known by the disputed domain name. In this respect, see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

For the above reasons, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The record shows that, within a few months after the Respondent’s registration of the disputed domain name in November 2023, it resolved to a website which impersonated the Complainant or which Internet users were apt to assume it was operated by, or with the authority of, the Complainant. This suggests both an awareness by the Respondent of the Complainant’s ARTSMARK mark as at the date of registration of the disputed domain name and an intention on its part to take unfair advantage of it. It is well-established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant’s trade mark registration and where the domain name is put to a misleading use establishes bad faith; see, for example, *Bureau Veritas v. Wolfgang Robert*, WIPO Case No. [D2021-2376](#). The Respondent’s registration of the disputed domain name is accordingly in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted 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 website. The use to which the Respondent has put the disputed domain name falls within this circumstance in that the content of its website will have misled Internet users into believing that it was operated, or authorized, by the Complainant. Such a belief will have been reinforced because of the identity between the disputed domain name and the Complainant's ARTSMARK mark, and the use of the Complainant's figurative mark within the website at the disputed domain name; see section 3.1.4 of the [WIPO Overview 3.0](#) and, by way of example, *The Ohio State University v. Aaron Brooks*, WIPO Case No. [D2021-3674](#) and *Delsey v. Lenna Wehner*, WIPO Case No. [D2023-4648](#).

For the above reasons, the Panel finds the Respondent's registration and use of the disputed domain name is in bad faith and that the third element of the Policy has therefore been established.

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 <artsmark.org> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: July 5, 2024