

ADMINISTRATIVE PANEL DECISION

Duke Ellington School of the Arts Project v. Budy Corbuzier
Case No. D2024-2037

1. The Parties

The Complainant is Duke Ellington School of the Arts Project, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Budy Corbuzier, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <ellingtonschool.org> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 15, 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 21, 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, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 21, 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 23, 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 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.

On June 19, 2024, the Respondent sent an informal email following which the Center sent an email to the Parties about the possible settlement options. The Complainant replied on June 20, 2024 requesting to continue with the proceeding.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on June 27, 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 following facts are undisputed.

The Complainant, Duke Ellington School of the Arts Project, is a partnership composed of four organizations that operates the Duke Ellington School of the Arts. Inaugurated in 2000, the Complainant's partners are The Ellington Fund, the District of Columbia Public Schools Organization, the John F Kennedy Center for the Performing Arts, and George Washington University.

The Duke Ellington School of the Arts ("DESA") is a well-known public high school dedicated to providing for arts education for talented youth. DESA offers a dual curriculum integrating academics with pre-professional arts training in various disciplines including dance, visual arts and theatre. DESA was established in 1974 by Peggy Cooper Cafritz and Mike Malone, both African-American artists, and was named after the renowned jazz pianist, composer and musician Edward Kennedy "Duke" Ellington, who died in 1974. DESA is known for its celebrity alumni, including Ari Lennox, Dave Chappelle, and Samira Wiley.

Both the Complainant and DESA work closely with The Estate of Mercer K. Ellington (the "Ellington Estate"), an estate existing under the laws of the State of Florida, United States. Since Duke Ellington's death in 1974, The Ellington Estate and his son, Mercer Ellington, made substantial efforts to continue his reputation and his legacy, including registering trademarks, working closely with the Complainant to further arts education and licensing the DUKE ELLINGTON mark, name, and Duke Ellington's image and signature, for use in a broad category goods and services, including limited edition prints, luxury watches, and books.

The Ellington Estate owns trademark registrations for DUKE ELLINGTON, including the United States trademark Registration No. 2,807,769 for the word mark DUKE ELLINGTON, registered on January 27, 2004, and trademarks that comprise DUKE ELLINGTON in the United States. The Ellington Estate has conferred upon the Complainant rights in these trademarks for the purpose of recuperating the disputed domain name in the form of a written confirmation.

DESA registered the disputed domain name on October 28, 1999 and used the disputed domain name to host its official website since at least February 2001, until late November 2023. The disputed domain name expired in October 2023 following an administrative oversight on the part of DESA. The Complainant understood that the disputed domain name was subsequently sold at auction on December 2, 2023 and is now registered under privacy in the name of the Respondent.

DESA's current official website can be found at "<https://ellingtonarts.org>". Until at least February 23, 2024, the disputed domain name resolved to a website (the "Respondent's Website") that reproduced the contents of DESA's website at the disputed domain name as at November 2020, with an identical logo, layout and images and very similar text. At the time of filing the Complaint, the disputed domain name resolved to an inactive web page, whilst at the time of this Decision the disputed domain name resolved to again a page mimicking DESA's official 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 disputed domain name.

Notably, the Complainant contends the following:

The invoked trademarks, which predate the Respondent's registration of the disputed domain name by approximately 15 years, are distinctive and well-known, not only in connection with the renowned jazz pianist, composer and musician Edward Kennedy "Duke" Ellington, but also in connection with DESA. Since being established 50 years ago, DESA has developed a prestigious reputation as a world-class school.

As a result, the invoked trademarks have acquired considerable renown.

The timing of the registration of the disputed domain name, being shortly after the disputed domain name inadvertently was allowed to lapse after having been registered for an uninterrupted period of over 20 years, indicates bad faith on the part of the Respondent. WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), 3.0, section 3.2.1.

In light of the Respondent's use of the disputed domain name, to resolve to a cloned copy of DESA's website as at 2020, until at least February 23, 2024, the Respondent, having no affiliation with the Complainant or DESA and having no authorization to make use of the invoked trademarks in the disputed domain name or otherwise, knowingly registered the disputed domain name with the intention of creating a misleading impression of association between the disputed domain name and the Complainant, in bad faith.

Searches conducted by the Complainant's lawyers reveal that a respondent under the name of "Budy Corbuzier" of Indonesia was the subject of a prior adverse UDRP Complaint against it. It is likely that the Respondent is the same Budy Corbuzier of Indonesia. This would at a minimum suggest evidence of the Respondent's bad faith registration of the disputed domain name.

The Respondent's attempt to impersonate the Complainant, including with a "Donate Now" page on the Respondent's website, carries a high risk that unsuspecting Internet users would be misled into disclosing personal and/or financial information, which may, in turn, be used for further illegitimate purposes.

Prior UDRP Panels have found that registering a domain name whose prior registration lapsed indicates bad faith on the part of the Respondent, particularly when considering the length of time that DESA had previously registered and used the disputed domain name. See in this regard *Skeeter Products, Inc. v. Registration Private, Domains By Proxy, LLC / Nanci Nette*, WIPO Case No. [D2020-2320](#).

B. Respondent

The Respondent only informally replied to the Complaint, only stating "Just take back the domain, and give my money back. I bought the domain legally via godaddy auction. Thank you".

6. Discussion and Findings

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 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 for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Complainant has provided sufficient evidence that it has the authorization from the Ellington Estate to use the trademark and to file the Complaint. [WIPO Overview 3.0](#), section 1.4.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The disputed domain name incorporates a dominant part of the trademark DUKE ELLINGTON. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here “school” 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 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 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.

Panels have held that the use of a domain name for illegal activity, here, claimed as applicable to this case: impersonation/passing off (including a “Donate Now” option) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

C. Registered and Used in Bad Faith

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.

Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitute bad faith under the Policy. This follows in particular from the fact that the disputed domain name resolved to a website mimicking the Complainant’s website, also bearing in mind that the disputed domain name was owned before by the Complainant. Panels have anyway held that the use of a domain name for illegal activity here, claimed as applicable to this case: impersonation/passing off (including a “Donate Now” option) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Respondent's use of a privacy service to conceal its identity further supports an inference of bad faith on the part of the Respondent. [WIPO Overview 3.0](#), section 4.4.6.

The Panel finds that the Complainant has established the third element 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 disputed domain name <ellingtonschool.org> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: July 8, 2024