

ADMINISTRATIVE PANEL DECISION

Allan Myers, Inc. v. Allanmyersinc Allanmyersinc, allanmyersinc
Case No. D2024-2108

1. The Parties

The Complainant is Allan Myers, Inc., United States of America (“United States”), represented by Cozen O'Connor, United States.

The Respondent is Allanmyersinc Allanmyersinc, allanmyersinc, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <allanmyersinc.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 21, 2024. On May 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 23, 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 (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 27, 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 28, 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 June 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 28, 2024.

The Center appointed Dawn Osborne as the sole panelist in this matter on July 8, 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 a construction company established in 1939 and the owner of:

- 1) the ALLAN MYERS (word mark) registered as trade mark number 4828189 since October 6, 2015; and
- 2) the ALLAN MYERS (device mark) registered as trade mark number 5104045 since December 20, 2016;

both registered for construction services in the United States.

The disputed domain name was registered March 29, 2024, and at the time of filing of the Complaint, it was used for a website that closely copied the web site of the Complainant including the use of the Complainant's ALLAN MYERS mark in its registered device mark form as a masthead and the Complainant's address, although this web site has now been taken down.

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 ALLAN MYERS word mark, adding only the corporate term "inc" (to reflect the Complainant's actual corporate name) and the generic Top-Level Domain ("gTLD") ".com" which does not prevent confusing similarity under the Policy.

The Respondent is not authorised by the Complainant and has no rights or legitimate interests in the disputed domain name. The Respondent has copied the Complainant's name to use as the registrant's name for the disputed domain name for the Whois database and has attached a copy of the Complainant's web site to the disputed domain name for the purpose of deception by using a similar telephone number, and keeping the same address. Further, the Respondent, as of May 21, 2024, was actively soliciting customers and vendors of the Complainant to make payments through an email address associated with the disputed domain name. Accordingly, the Respondent is clearly not commonly known by the disputed domain name and is not using it for a bona fide offering of goods or services or a legitimate commercial fair use. The disputed domain name has been registered in opportunistic bad faith, for the purposes of deception, in full knowledge of the Complainant's rights, to confuse Internet users for commercial gain and disrupt the Complainant's business.

B. Respondent

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

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[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 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 Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "inc" 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 gTLD is typically disregarded for the purposes of the confusing similarity test where the gTLD does not form part of the trade mark in question. [WIPO Overview 3.0](#), section 1.11.1.

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.

The Respondent is not authorised by the Complainant, but has used the disputed domain name to host a copy of the Complainant's web site including the use of the Complainant's ALLAN MYERS device mark as a masthead and the Complainant's address, which is clearly designed to deceive Internet users to believe falsely that the disputed domain name is associated with the Complainant. The disputed domain name is inherently deceptive reflecting the Complainant's corporate name. Although the Respondent is listed as "Allanmyersinc Allanmyersinc, allanmyersinc" on the Whois database, the Respondent's organization name is the same as the Complainant's corporate name and is clearly part of the deception that the Respondent is seeking to perpetuate. Based on the available record, the Respondent is not commonly known by the disputed domain name.

Panels have held that the use of a domain name for illegal activity here impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. It is not a bona fide offering of goods or services or legitimate noncommercial fair use.

Further, the Complainant also asserts that the Respondent was actively soliciting customers and vendors of the Complainant to make payments through an email address associated with the disputed domain name, to which has not been rebutted by the Respondent.

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.

In the present case, the Panel notes that the Respondent has devised the disputed domain name to reflect the Complainant's corporate name and has registered the disputed domain name falsely in the name of the Complainant as its organization name to point to a copy of the Complainant's web site. The mere copying of the Complainant's web site by the Respondent shows that the Respondent was aware of the Complainant and its rights, business and services. The Respondent has intentionally attempted to attract for commercial gain Internet users to the Respondent's web site by creating a likelihood of confusion with the Complainant's mark. Such use of the disputed domain name has also disrupted the Complainant's business.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

By using the Complainant's name as the Respondent's organization name for the disputed domain name, the Respondent has given false contact details for the Whois database which is a further indication of bad faith.

Additionally, panels have held that the use of a domain name for illegal activity here impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Further, according to the Complainant, the Respondent was actively soliciting customers and vendors of the Complainant to make payments through an email address associated with the disputed domain name.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <allanmyersinc.com> be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: July 14, 2024