

ADMINISTRATIVE PANEL DECISION

BAL DU MOULIN ROUGE v. Ion Kostylev, vencom ltd
Case No. D2024-3588

1. The Parties

The Complainant is BAL DU MOULIN ROUGE, France, represented by CASALONGA, France.

The Respondent is Ion Kostylev, vencom ltd, Republic of Moldova.

2. The Domain Name and Registrar

The disputed domain name <moulinrougetickets.net> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 4, 2024. On September 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 9, 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 (Anonymous) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 September 10, 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 September 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 5, 2024.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on October 10, 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 French public limited company created in 1889 and is known under the name “Moulin Rouge”, a touristic attraction in Paris, offering musical dance entertainment for visitors. The Complainant operates as a theatre for dance parties, entertainment, and receptions and offers its services and facilities.

The Complainant is the owner of the active trademark registrations in the trademark MOULIN ROUGE, amongst which:

- European Union figurative trademark No. 010841567 for MOULIN ROUGE, registered on September 24, 2012, in classes 3, 4, 9, 11, 14, 16, 18, 20, 21, 24, 25, 26, 28, 29, 30, 32, 33, 41, and 43;

- International word trademark No. 1016676 for MOULIN ROUGE, registered on June 12, 2009, in classes 3, 9, 11, 14, 16, 18, 20, 21, 24, 25, 32, 33, 41, and 43. This trademark designates the following countries: Australia, Bahrain, Belarus, Switzerland, China, Algeria, Egypt, Croatia, Iceland, Japan, Kenya, Republic of Korea, Kazakhstan, Liechtenstein, Morocco, Monaco, Montenegro, Madagascar, Namibia, Norway, Oman, Serbia, Russian Federation, Singapore, Türkiye, Ukraine, and Viet Nam (duly renewed in those countries); and

- European Union word trademark No. 000110437 for MOULIN ROUGE, registered on November 5, 1998, in classes 3, 14, 18, 25, 32, 33, and 41.

The Complainant also owns numerous domain names incorporating the trademark MOULIN ROUGE, amongst which <moulin-rouge.com>, <moulinrouge.com>, <moulinrouge.fr>, and <moulin-rouge.fr>.

The disputed domain name was registered on August 8, 2024. According to a screenshot submitted by the Complainant dated August 14, 2024, the disputed domain name previously resolved to a website that promoted MOULIN ROUGE activities and offered tickets for MOULIN ROUGE shows for sale. At the time of this decision, the disputed domain name directs to inactive webpage.

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, regarding the first element of the Policy, the Complainant contends that they have rights in the well-known trademark MOULIN ROUGE and that the disputed domain name is confusingly similar to this trademark. The Complainant points out that the disputed domain name reproduces the trademark MOULIN ROUGE in its entirety. Further, the Complainant claims that the disputed domain name merely appends the descriptive term “tickets” to the Complainant’s MOULIN ROUGE trademark, which does not affect the finding of confusing similarity. Moreover, the Complainant claims that the generic Top-Level Domain (“gTLD”) “.net”, can be ignored for the purpose of comparison of the disputed domain name to the Complainant’s trademark.

Regarding the second element of the Policy, the Complainant claims that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant contends that the Respondent does not own any trademark rights in MOULIN ROUGE and is not commonly known by the disputed domain name. Furthermore, the Complainant confirms that the Respondent has not been granted any license or authorization from the Complainant to use a domain name featuring the MOULIN ROUGE trademark. Moreover, the Complainant contends that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods and services nor making a legitimate non-commercial or fair use of the disputed domain name. Instead, the Complainant points out that the Respondent used the disputed domain name to direct Internet traffic to a fake and illegitimate website promoting MOULIN ROUGE activities, which included selling fake tickets for MOULIN ROUGE shows. Additionally, while the disputed domain name is not in use, the Complainant notes that the Respondent's previous website fails to meet the "Oki Data test" since the Respondent did not offer tickets but sold false tickets which did not allow to access the shows. Finally, the Complainant notes that the fact that the litigious content was deleted right after the communication with the in-house lawyer of the Complainant indicates that the Respondent has no legitimate interest in the disputed domain name.

As for the third element of the Policy, the Complainant contends that the Respondent registered and used the disputed domain name in bad faith. The Complainant claims that the Respondent took clearly an unfair advantage of the efforts and investments made by the Complainant for many years to promote its shows and derived products and to make its well-known theatre activities since the disputed domain name directed to a fake platform selling false tickets for MOULIN ROUGE shows. This finding of bad faith is compounded by the use of the term "tickets" in the disputed domain name, which exacerbates confusion because it implies a link with the Complainant's operations, and by the fraudulent nature of the platform – which allowed the Respondent to collect very sensitive data of Internet users, such as banking information. In addition, the content of the disputed domain name was deleted a few hours after the communication with the in-house lawyer of the Complainant, which also demonstrate the bad faith of the Respondent. Furthermore, the Complainant claims that there is no doubt that the Respondent was aware or should have been aware of the Complainant's well-known MOULIN ROUGE trademark given its reputation and that the Complainant never authorized, licensed or otherwise consented to the Respondent's use of its trademarks. The Complainant also highlights that it is a well-established principle that registration of a domain name that is confusingly similar to a well-known trademark by an entity which does not have a relationship with such trademark can amount to sufficient evidence of bad faith registration and use.

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 trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, “tickets”, 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 trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Finally, as for the applicable generic Top-Level domain (“gTLD”) “.net”, the Panel holds that this can be disregarded under the first element confusing similarity test. [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.

First, Panels have held that the use of a domain name for illegal activity (here, claimed as applicable to this case: sale of counterfeit goods and fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. According to the evidence submitted by the Complainant, at least one person purchased a fake ticket purported to grant access to a show of the Complainant on the disputed domain name. In this regard, the Respondent lacks rights or legitimate interests in the disputed domain name.

In addition, having reviewed the available record and in addition to the aforementioned illegality, 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 Panel finds that the Respondent does not use the disputed domain name in connection with a bona fide offering of services and has neither made a legitimate noncommercial or fair use of the disputed domain name. Not only is the disputed domain name currently not being actively used, but any prior use of the disputed domain name to sell fake Moulin Rouge show tickets fails the “Oki Data test” for bona fide offering of goods and services given the fraudulent nature of the tickets sold. *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). In addition, the Complainant confirmed that the Respondent is not affiliated with the Complainant in any way nor has the Complainant licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant’s trademarks. Noting the composition of the disputed domain name, in the absence of any license or permission from the Complainant to use its trademarks, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#) and *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)). The Panel also found no evidence that the Respondent has been commonly known by the disputed domain name or owns any registered trademarks in MOULIN ROUGE.

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.

Panels have held that the use of a domain name for illegal activity here, the sale of counterfeit tickets for MOULIN ROUGE shows, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. As discussed previously, according to the evidence submitted by the Complainant, the Respondent previously used the disputed domain name to host a website on which it offered fake MOULIN ROUGE shows tickets for sale. On this basis, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Furthermore, it should be noted that 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 also 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. The following other circumstances further support a finding of bad faith.

First, the Panel believes that the Respondent knew at the time of registration that the disputed domain name included the Complainant's MOULIN ROUGE trademark. As demonstrated by the Complainant, prior panels have previously recognized that the MOULIN ROUGE trademark is well-known (see, for example: *Bal du Moulin Rouge v. Name Redacted*, WIPO Case No. [D2024-2177](#); *Bal du Moulin Rouge v. David Millar*, WIPO Case No. [D2024-0877](#); *Bal Du Moulin Rouge v. Hernan Ulloa, Ulloa y Asociados*, WIPO Case No. [D2023-5145](#)). Other prior panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see [WIPO Overview 3.0](#), section 3.1.4). Moreover, the Complainant's evidence shows that the MOULIN ROUGE trademark was registered many years before registration of the disputed domain names in several countries. The Respondent's knowledge of the Complainant and its trademarks and therefore its registration in bad faith of the disputed domain names may accordingly also be inferred from these circumstances. [WIPO Overview 3.0](#), section 3.2.2.

Second, panels have found that the non-use of a domain name (including cases where the webpage shows a certain domain name is not connected to any account on a particular platform) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's trademark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement).

[WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's MOULIN ROUGE trademark as well as the composition of the disputed domain names. In addition, the Panel notes the Respondent's failure to submit a response to the Complaint. Finally, according to the evidence submitted by the Complainant, the Panel believes that the address (i.e., postal code) provided by the Respondent is inaccurate or false since it does not exist. In light of these circumstances, the Panel finds that the passive holding of the disputed domain name does not prevent a finding of 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 <moulinrougetickets.net> be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: October 24, 2024