

ADMINISTRATIVE PANEL DECISION

JNJ Enterprises, LLC v. roland david, roladn
Case No. D2024-3670

1. The Parties

The Complainant is JNJ Enterprises, LLC, United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, PC, United States.

The Respondent is roland david, roladn, United States.

2. The Domain Name and Registrar

The disputed domain name <michtersbourbonstore.com> is registered with Global Domain Group LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 10, 2024. On September 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 11, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 September 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 10, 2024. The Respondent sent an informal email communication to the Center on October 15, 2024.

The Center appointed Steven Auvil as the sole panelist in this matter on October 16, 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.

On October 17, 2024, the Respondent send another informal email communication to the Center.

4. Factual Background

According to the Complaint, the Complainant is the current owner of MICHTER'S American distillery originally founded in 1753. The Complainant alleges that its distillery is one of the most highly regarded brands of whiskey and bourbon produced in the world and has won many awards and accolades. The Complainant also maintains a strong presence on the Internet including through social media.

The Complainant owns trademark registrations in the United States for its MICHTER'S brand, including United States Registration Nos. 4449196, registered on December 10, 2013; 4810325, registered on September 8, 2015; 2527731, registered on January 8, 2002; 5978518 for the mark MICHTER'S DISTILLERY, registered on February 4, 2020; and 2959736 for the device mark MICHTER'S EST. 1753 US*1, registered on June 7, 2005. The Complainant also owns trademark registrations in various other jurisdictions.

The disputed domain name was registered on July 4, 2024. According to the Complaint, the disputed domain name is being used to impersonate the Complainant, purporting to offer the Complainant's products.

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.

The Complainant first contends that the disputed domain name is confusingly similar because it incorporates the Complainant's MICHTER'S mark, merely omitting the apostrophe and adding the non-distinctive terms "bourbon" and "store," and the generic Top-Level Domain ("gTLD") ".com".

The Complainant further alleges that the Respondent has no rights or legitimate interest in the disputed domain name because the Respondent registered the disputed domain name in 2024, long after the Complainant established rights in its MICHTER'S mark. The Complainant further alleges that there is no relationship between the Respondent and the Complainant, nor has the Complainant given the Respondent permission to use the Complainant's MICHTER'S mark in any manner.

The Complainant further alleges that the Respondent has registered and used the disputed domain name in bad faith. The Complainant alleges that the Complainant's MICHTER'S mark is recognizable in the disputed domain name and is being used to profit from the Complainant's goodwill. According to the Complaint, the Respondent is using the disputed domain name to pass off its website as that of the Complainant, purportedly offering the Complainant's products and using the Complainant's images in an attempt to attract, for commercial gain, confused Internet users to the website. In doing so, according to the Complainant, the Respondent is creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website associated with the disputed domain name.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent did not file a response to the Complaint by the deadline for responding. The Respondent's email communication on October 15, 2024, did not fully respond to the Complainant's contentions besides listing apparent flavors of substances including gummies. On October 17, 2024, after the constitution of the

Panel, the Respondent sent an additional email to the Center of the same nature as its October 15, 2024 email communication.

6. Discussion and Findings

According to 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.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following to obtain relief:

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

In view of the Respondent’s failure to submit a Response addressing the Complainant’s contentions or the elements required under the Policy, the Panel is entitled to accept as true the allegations set forth in the Complaint (unless the evidence is clearly contradictory), and to derive reasonable inferences from the evidence presented. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#).

Based on the foregoing guidance, the Panel makes the following findings and conclusions based on the allegations and evidence contained in the Complaint and reasonable inferences drawn from the evidence presented.

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 evidence submitted by the Complainant supports the conclusion that the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. The Complainant owns several United States and international trademarks for MICHTER’S mark, the earliest of those registered in 2002. [WIPO Overview 3.0](#), section 1.2.1.

As set forth in [WIPO Overview 3.0](#), section 1.7, when the entirety of a mark is reproduced within the disputed domain name, or “at least a dominant feature of the relevant mark is recognizable in the domain name”, the disputed domain name is deemed confusingly similar to the mark for the purposes of the Policy. Further, section 1.8 of [WIPO Overview 3.0](#) states that “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

Here, the entirety of the mark is reproduced within the disputed domain name, with the additional terms “bourbon” and “store” and gTLD “.com” and the omission of the apostrophe (which is not possible to represent in a domain name). 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.

Although the addition of other terms—here, “bourbon” and “store”—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; see also *Age International, Inc. d/b/a Blanton Distilling Company v. Domain Administrator, See PrivacyGuardian.org / Jone Mike, Shengyi Co., Ltd.*, WIPO Case No. [D2022-2262](#).

Additionally, as set forth in section 1.11.1 of [WIPO Overview 3.0](#), the applicable gTLD (e.g., “.com”, “.site”, “.info”, “.shop”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. As such, the use of “.com” in the disputed domain name has no bearing on establishing identity or confusing similarity here. See *Ally Financial Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-2037](#).

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. Such circumstances include:

(i) before any notice of the dispute, the respondent used, or prepared to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services;

(ii) the respondent (as an individual, business, or other organization) is commonly known by the disputed domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

[WIPO Overview 3.0](#), section 2.1.

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 in a domain name, 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 evidence of record, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name as the evidence supports the conclusion that the Respondent is using the disputed domain name as part of a phishing scheme whereby the Respondent has impersonated the Complainant in a likely fraudulent offering of the Complainant’s branded goods. Further, the Respondent has not rebutted the Complainant’s prima facie showing; in fact, the Respondent has not come forward with any evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy. Moreover, there is no evidence that the Complainant has licensed or otherwise authorized the Respondent’s use of the MICHTER’S mark as a domain name, nor is there evidence that the Respondent has any affiliation, association, sponsorship, or connection with the Complainant.

Panels have held that the use of a domain name for illegal activity, such as phishing and impersonation/passing off, can never confer rights or legitimate interests on a respondent.

[WIPO Overview 3.0](#), section 2.13.1. Here, the evidence demonstrates that the Respondent has used the disputed domain name in an attempt to impersonate the Complainant and purportedly sell the Complainant’s products without authorization.

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 that, if found by the Panel to be present, are evidence of the registration and use of a domain name in bad faith. Such circumstances include, amongst others, where “the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor,” and where “by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on the respondent’s website or location.” [WIPO Overview 3.0](#), section 3.1.

Additionally, section 3.2.1 of the [WIPO Overview 3.0](#) provides that “[p]articular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant’s area of activity or natural zone of expansion); [...] (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent’s choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant.”

In the present case, the Panel concludes that the Respondent registered and used the disputed domain name in bad faith. The disputed domain name incorporates the entirety of the Complainant’s registered and well-known MICTHER’S mark, resulting in confusing similarity and a risk of implied affiliation, particularly when considering the composition of the disputed domain name (the addition of the descriptive terms “bourbon” and “store”) and the commercial use to which the disputed domain name has been put. This alone reflects registration and use in bad faith.

Moreover, the Panel finds that the Respondent has engaged in illegal acts of using the disputed domain to impersonate the Complainant in order to purportedly sell the Complainant’s products without the Complainant’s authorization. Panels have also held that the use of a domain name for this kind of activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel therefore 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 <michtersbourbonstore.com> be transferred to the Complainant.

/Steven Auvil/

Steven Auvil

Sole Panelist

Date: October 30, 2024