

ADMINISTRATIVE PANEL DECISION

Allan Myers, Inc. v. Mmm Name
Case No. D2024-3835

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 Mmm Name, United States.

2. The Domain Name and Registrar

The disputed domain name <allanrnyers.com> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 19, 2024. On September 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 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 September 23, 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 September 23, 2024, and amended Complaint on September 25, 2024.

The Center verified that the Complaint together with the amendment to the Complaint and 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 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 18, 2024.

The Center appointed Lynda M. Braun as the sole panelist in this matter on October 24, 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 services company incorporated in Delaware with headquarters in Worcester, Pennsylvania. Since its founding in 1939, the Complainant has provided numerous construction services, including, but not limited to, construction consultation, construction management, construction planning, consultation services for the construction of water and wastewater plants, construction of water and wastewater plants, laying and construction of pipelines, road and highway construction, road and highway paving services, and bridge construction services.

The Complainant owns the following incontestable federal trademark through the United States Patent and Trademark Office ("USPTO"): ALLAN MYERS, United States Trademark Registration No. 4828189, registered on October 6, 2015, in international class 37. The Complainant also claims that it has common law trademark rights in the ALLAN MYERS trademark through the use, advertisement, and promotion of such mark in connection with the Complainant's construction services. The foregoing trademarks will hereinafter be collectively referred to as the "ALLAN MYERS Mark".

The Complainant owns the domain name <allanmyers.com> which resolves to the Complainant's official website at "www.allanmyers.com", and which includes information about the Complainant and the services it provides.

The Disputed Domain Name was registered on September 10, 2024, and resolves to a parking page displaying pay-per-click ("PPC") links that feature third-party sponsored websites that are completely unrelated to the Complainant or its services. In addition, according to the Complainant, the Respondent used the Disputed Domain Name to configure emails that it sent to customers and vendors of the Complainant, purportedly requesting payments for money owed to be remitted to the Respondent's bank account. The Complainant, however, has not submitted any evidence of such a fraudulent scheme by the Respondent.

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 Mark as it incorporates the identical "allan" portion of the ALLAN MYERS Mark, but spells the portion "rnyers", using the letters "r" and "n": to resemble the letter "m", and which, when used in lower case, looks visually similar to "myers" in the Complainant's Mark, and then followed by the generic Top-Level Domain ("gTLD") ".com";
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Disputed Domain Name resolves to a landing page that contains PPC third-party sponsored hyperlinks, the Complainant has not authorized the Respondent to register a domain name containing the ALLAN MYERS Mark, the Respondent was not making a bona fide offering of goods or services through the Disputed Domain Name, and the Respondent has never been commonly known by the ALLAN MYERS Mark or any similar name; and

- the Disputed Domain Name was registered and is being used in bad faith since, among other things, the Disputed Domain Name resolved to a PPC landing page where the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's ALLAN MYERS Mark as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that the Disputed Domain Name is confusingly similar to the ALLAN MYERS Mark.

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

It is uncontroverted that the Complainant has established rights in the ALLAN MYERS Mark based on its years of use as well as its registered trademark for the ALLAN MYERS Mark in the United States. The consensus view is that "registration of a mark is prima facie evidence of validity". The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the ALLAN MYERS Mark.

The Disputed Domain Name consists of the entirety of the "allan" portion of the ALLAN MYERS Mark, but spells the portion "rnyers", using the letters "r" and "n": to resemble the letter "m", and which, when used in lower case, looks visually similar to "myers" in the Complainant's Mark, and then followed by the gTLD ".com". Here, the ALLAN MYERS Mark is recognizable in the Disputed Domain Name and supports a finding of confusing similarity.

Finally, the addition of a gTLD such as ".com" in a domain name is a technical requirement. As such, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's ALLAN MYERS Mark.

Based on the available record, the Panel finds that 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 a 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 that 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 Complainant’s prima facie case includes the fact that the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its ALLAN MYERS Mark, that the Complainant does not have any type of business relationship with the Respondent, that there is no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, and that there is no evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c).

Further, as noted above, the Disputed Domain Name resolves to a parking page displaying PPC links to various third-party goods and services. The Panel infers that the Respondent is seeking to generate click-through revenue from Internet users drawn to the Respondent’s web page due to a perceived association between the Disputed Domain Name and the Complainant’s Mark. Such conduct, where the Respondent is seeking to unfairly capitalize on the goodwill associated with the Complainant’s trademark, does not amount to use of the Disputed Domain Name in connection with a bona fide offering of goods or services. As such, the Respondent’s registration and use of the Disputed Domain Name may be deemed commercially motivated and does not amount to a legitimate noncommercial or fair use within the meaning of paragraph 4(c)(iii) of the Policy.

Based on the available record, the Panel finds that 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.

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. The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent’s bad faith registration and use of the Disputed Domain Name, 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.

The Panel also finds that the Respondent had actual knowledge of the Complainant and its rights in the ALLAN MYERS Mark when registering the Disputed Domain Name, emblematic of bad faith registration and use. It strains credulity to believe that the Respondent did not know of the Complainant or its ALLAN

MYERS Mark as evidenced by the Respondent's use of the ALLAN MYERS Mark in the Disputed Domain Name. Thus, the Panel finds that in the present case, the Respondent had the Complainant's ALLAN MYERS Mark in mind when registering and using the Disputed Domain Name.

Further, the Panel concludes that the Respondent's registration of the Disputed Domain Name was an attempt to disrupt the Complainant's business for commercial gain. See *Newegg Inc. v. Nicole Alex and Alexander Ethan*, WIPO Case No. [D2019-2740](#) (registration of disputed domain names was likely to have been made in an attempt to receive commercial gain from their exploitation). The Panel additionally finds that the Respondent's use of the Disputed Domain Name was also highly likely to confuse the Complainant's customers and vendors into incorrectly believing that the Respondent was authorized by or affiliated with the Complainant.

Moreover, the Disputed Domain Name resolves to a parking page displaying PPC links to third-party goods and services and the Panel infers that the Respondent derives click-through revenue from the presence of such links on the website to which the Disputed Domain Name resolves. The Panel finds that by using the Disputed Domain Name in such a manner, the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's ALLAN MYERS Mark as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name, in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds that the third element of the Policy has 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 <allanmyers.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: October 31, 2024