

ADMINISTRATIVE PANEL DECISION

Elohim Television (Elohim TV), Myrna Tabchoury v. Young Kim
Case No. D2024-4399

1. The Parties

The Complainant is Elohim Television (Elohim TV), Togo, (the “first Complainant”) and Myrna Tabchoury, Togo, (the “second Complainant”) represented by ENTER-LAW, France.

The Respondent is Young Kim, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <elohimtv.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 25, 2024. On October 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 28, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 29, 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 October 31, 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 November 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 25, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on November 29, 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 first Complainant is Elohim Television, a Togolese company. The second Complainant is Mrs. Myrna Tabchoury, an individual who is the owner and CEO of the first Complainant. Unless the context otherwise requires, the Panel will refer to the first and second Complainants collectively as “the Complainant”.

The second Complainant is the owner of the following registered trademarks for the combined device and word mark ELOHIM TV in which these capitalized words are superimposed in a red colored stylized typeface over the image of a waterfall with the word ELOHIM above the word TV: (1) Benelux Registered Trademark Number 1469444, registered on November 8, 2022, in Classes 35, 38, and 41, (2) African Intellectual Property Organization Registered Trademark Number 136025, registered on November 18, 2022, in Classes 35, 38, and 41, having effect in all of the 17 member states of said Organization, and (3) Ghanaian Registered Trademark Number 57942, registered on July 31, 2023 in Class 41. The first Complainant is the licensee of such marks, and has sublicensed them to a company named New World TV, which, since 2023, has developed and distributes worldwide a Christian web television channel named “Elohim TV” via a mobile application or “app”. Said app is available on the major mobile application stores and on emulation platforms.

The disputed domain name was registered on January 21, 2002. Nothing is known of the Respondent, which has not participated in the administrative proceeding, other than that it appears to be a private individual with an address in the United States. There does not appear to be any website associated with the disputed domain name, based upon the Complainant’s screenshots taken on August 30, 2024 and October 24, 2024, both of which show a “Server not found” error. According to screenshots from the Internet Archive “Wayback Machine” produced by the Complainant, the only captured web-based activity associated with the disputed domain name was recorded between March 24, 2004 and January 24, 2005, consisting of a parking page referencing a domain name registrar and consisting of general click-through links, with no specific religious focus, which may have been Pay-Per-Click (“PPC”) links.

“Elohim” is a dictionary word meaning “God” in Hebrew, and “tv” is an abbreviation for “television”.

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 identical to the verbal element of the Complainant’s trademarks, and that the textual element of said marks should be compared to the disputed domain name in assessing identity or confusing similarity, adding that the design element is not the dominant portion such that it would overtake the textual elements in prominence, and that the space between the words in the mark should be ignored because it is impossible to represent in a domain name.

The Complainant contends that public records contain no trace of any rights or legitimate interests on the part of the Respondent in respect of the disputed domain name, adding that the website associated with the disputed domain name returns an error page, and that nothing indicates the Respondent’s activity or interest in religion or television, bearing in mind the fact that “Elohim” is a dictionary word meaning “God” in Hebrew, and “tv” is an abbreviation for “television”. The Complainant refers to the parking page associated with the

disputed domain name from 2004 to 2005, and contends that there is no indication that the Respondent is the initial disputed domain name holder, or the controller of said parking page, adding that the owner contact data has changed twice, on August 14, 2023 and October 17, 2024, based upon the Registrar's "Updated Date". The Complainant asserts that this can mean that the disputed domain name was transferred between registrants.

The Complainant contends in the absence of a full disclosure of the registration history by the Registrar, which has refused to share information without a subpoena, that the Respondent does not use the disputed domain name in connection with a bona fide offering of goods or services, that the Respondent has not been commonly known by the disputed domain name, and that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant notes that, at present, it is unclear to it when the Respondent became the holder of the disputed domain name. The Complainant asserts that reservation of a domain name with a religious significance for the purpose of generating click-through fees is immoral and in bad faith. The Complainant invites the Panel to consider if the Respondent acquired the disputed domain name in anticipation of trademark rights, to resell the disputed domain name to future trademark owners at a disproportionate price, or to prevent publishers of Christian television channels from registering the disputed domain name, asserting that such actions would be in bad faith.

The Complainant asserts that if the Respondent acquired the disputed domain name after its creation, the Panel should review the circumstances at the date of such acquisition, adding that if the Respondent acquired the disputed domain name after August 28, 2022, this post-dates the Complainant's Benelux trademark, and if after August 23, 2023, this post-dates the worldwide availability of the Complainant's licensed application via the popular app store platforms, adding that a simple Internet search would have allowed the Respondent to discover these things, and indicating that the Respondent could not credibly claim to have been unaware of them.

The Complainant notes that the PPC page published on the website associated with the disputed domain name between 2004 and 2005 may have been generated by the then registrar of record but adds that the Respondent could be held responsible for such content, given that the linking of a domain name with a religious connotation to such a page is immoral and embodies bad faith.

The Complainant contends that the passive holding of the disputed domain name would not prevent a finding of bad faith, adding that nothing plausibly indicates a good faith use of the disputed domain name by the Respondent, and that bad faith may also be inferred from the Respondent's choice of a privacy or proxy service, and the provision of false underlying contact information.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue – Consolidation of Complainants

The Complainants note that they have a common grievance against the Respondent because the second Complainant is the owner of the ELOHIM TV trademarks (to which the disputed domain name is alleged to be confusingly similar) and the first Complainant is the exclusive licensee of such marks.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "[WIPO Overview 3.0](#)", section 1.4.1 states, inter alia, "an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint".

In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. [WIPO Overview 3.0](#), section 4.11.1.

Here, the Panel finds that consolidation is equitable and procedurally efficient, and that the Complainants have a specific common grievance against the Respondent. The Panel therefore orders consolidation of the Complainants' respective Complaints.

6.2 Substantive Issues

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 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.

To the extent that the Complainant's mark is a combination mark and partially figurative in nature, the graphical element of such mark (being the waterfall image and superimposed stylized rendering of the capitalized words "ELOHIM TV") is readily severable from the textual element for comparison purposes. [WIPO Overview 3.0](#), section 1.10. The textual element of said mark is alphanumerically identical to the Second-Level Domain of the disputed domain name, absent a space that is not permissible in a domain name for technical reasons.

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

B. Rights or Legitimate Interests

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel's findings in connection with the third element under the Policy, no good purpose would be served by addressing the issue of the Respondent's rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant's case on this topic is multi-faceted, but the common feature of all of its submissions is that it does not know and has not been able to determine when the Respondent acquired the disputed domain name. The Complainant predicates substantial elements of its case upon the "Updated Date" of the Whois record, surmising that changes in that date necessarily represent a change of ownership of the disputed domain name. This is crucial for the Complainant's case because the transfer of a domain name registration (if any) from a third party to a respondent is not a renewal, and the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith. [WIPO Overview 3.0](#), section, 3.9. However, the problem for the Complainant is that this particular date in the Whois record is not only updated when there is a change of ownership. A change of registrant or other contact details, such as a new telephone number or contact email address, or a change of delegated nameservers, may also result in this date updating in the Whois record.

In support of its position that the “Updated Date” represents a change of ownership, the Complainant produces what bears to be the opinion of an intellectual property lawyer that has been posted to a social media platform. However, this opinion makes it clear that the date concerned can change “if the name is sold or transferred, or if the longer-term registrant changes their physical address, phone number, email, or similar”. The Panel agrees with that view, noting that this comprises examples of a “longer-term registrant” merely updating some of the details associated with a domain name registration rather than a transfer of the domain name concerned to a new registrant. Given this, the “Updated Date” cannot be relied upon, on its own, by the Complainant as conclusive evidence that the disputed domain name has been acquired by the Respondent at a later date than the date of registration of the disputed domain name. Furthermore, there is nothing in the evidence from the Internet Archive “Wayback Machine,” or in the broader record before the Panel, which supports the notion of a change of ownership of the disputed domain name at either of the material dates. More information regarding any changes of registrant over the period of registration of the disputed domain name might have been found in historic Whois records, if available (on this topic, see, for example, *MG IP S.À.R.L. v. Prairie Web Development, Portfolio Manager*, WIPO Case No. [D2020-0608](#)). However, the Complainant did not produce any historic Whois records in evidence. Contrary to the Complainant’s submission, such records can be found online (in some cases on a commercial basis), if they have been preserved, without recourse to a subpoena served upon the Registrar; to the extent such evidence would be critical to proving the Complainant’s case, it is expected that the Complainant would provision such evidence and include it in its case – it has not done this, and the Panel is therefore unable to follow its arguments as to a change in ownership.

In all of these circumstances, and in the absence of evidence to the contrary, the Panel assumes that the Respondent is the original registrant of the disputed domain name, and that the corresponding date of registration of January 21, 2002 is the date upon which the question of registration in bad faith must be assessed. That date predates the registration of the Complainant’s various registered trademarks by two decades. There is no suggestion that the Complainant’s marks were in use as unregistered trademarks at the material date, and in fact they do not appear to have been used until the “Elohim TV” mobile app was deployed in 2023. Given these facts, the Respondent cannot have had the Complainant’s rights in mind when it registered the disputed domain name, nor is there any evidence that it was targeting nascent, as yet unregistered rights of the Complainant at that time. [WIPO Overview 3.0](#), section 3.8.2. Subject to the scenarios described in that section, where a respondent registers a domain name before the complainant’s trademark rights accrue, panels will not normally find bad faith on the part of the respondent, even though this would not impact a panel’s assessment of a complainant’s standing under the first UDRP element. [WIPO Overview 3.0](#), section 3.8.1.

It should be added for completeness that given the composition of the disputed domain name, being a dictionary word representing the Hebrew term “Elohim” with the common abbreviation “tv”, it is perfectly reasonable to infer that the Respondent would have been able to come up with that term independently of any rights subsequently generated two decades later by the Complainant. What is more, the Complainant’s argument that the Respondent must have been targeting some future use by a person such as the Complainant, which is operating a television channel by that name, holds no water. In terms of the Policy, the Complainant must prove on the balance of probabilities, and based upon the evidence on the record, that it is the Complainant’s rights that are being targeted, not the rights of a wide class of unknown potential entities (which class in this particular case might even include the Respondent, for all the Panel knows) that may be planning at some point in the indeterminate future to operate a business of the same name.

The evidence in the case file as presented does not indicate that the Respondent’s aim in registering the disputed domain name was to profit from or exploit the Complainant’s trademark.

The Panel finds that the Respondent did not register the disputed domain name in bad faith targeting of the Complainant or its trademark rights because the Complainant had no trademark rights at the time that the Respondent registered the disputed domain name. [WIPO Overview 3.0](#), section 3.8.1.

The Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: December 11, 2024