

## **ADMINISTRATIVE PANEL DECISION**

Andrea Mantella v. Jeffery Anderson, Astro pink official  
Case No. D2024-4550

### **1. The Parties**

The Complainant is Andrea Mantella, Canada, represented by Rowand LLP, Canada.

The Respondent is Jeffery Anderson, Astro pink official, Canada.

### **2. The Domain Name and Registrar**

The disputed domain name <astropinkofficialdelivery.com> is registered with Network Solutions, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 5, 2024. On November 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 6, 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 (PERFECT PRIVACY, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 7, 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 November 11, 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 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 10, 2024.

The Center appointed Christopher J. Pibus as the sole panelist in this matter on December 23, 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 an individual residing in the city of Toronto, Canada. She is the owner of a portfolio of registered rights in the word mark ASTROPINK, in Canada including the following marks:

Canada - registration of the trademark ASTROPINK No .1,208,069, issued November 10, 2023, covering a wide range of goods and services including cannabis and related wares, and online store services for cannabis;

Canada - registration of the trademark ASTROPINK No. 1,209,092, issued November 10, 2023, covering a wide range of goods and services including cannabis and related wares, and online store services for cannabis.

The Respondent registered the disputed domain name on March 15, 2024, which it uses to host a website operating as an online retail store for cannabis products, serving the Toronto market.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that she has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant relies on evidence of bad faith, based on a pattern of conduct involving the Respondent's use of the disputed domain name for a website which offers online retail services for cannabis products to customers in the Toronto area, and which prominently features the unauthorized use of the ASTROPINK trademark itself and reproduction of the Complainant's copyrighted images. In the circumstances, the Complainant urges the Panel to find deliberate targeting of the ASTROPINK mark for improper purposes.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, the Complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights;
- (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**

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 provided evidence of the existence of relevant trademarks, by providing proof of a number of Canadian registrations including those listed in paragraph 4 above. The Panel notes that the Complainant has not provided any evidence that her recently registered trademarks are in use in Canada or elsewhere, but since the marks have been registered, and no challenges or countervailing evidence have been proffered by the Respondent, the Panel concludes that the Complainant has established that she owns sufficient rights, for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the ASTROPINK mark is reproduced within the disputed domain name and 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, "official delivery" may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 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. In particular, the Complainant has provided detailed evidence that the Respondent is operating an unlicensed online retail business (through the use of the disputed domain name) selling cannabis products in the Ontario market, contrary to provincial laws and regulations. Despite repeatedly referring to the disputed domain name as the "OFFICIAL ASTRO PINK DELIVERY", the Respondent has never been authorized or otherwise licensed to use the ASTROPINK trademarks nor to imply an affiliation to the Complainant or her brand. 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.

Panels have held that the use of a domain name for illegal activity (here, impersonation and the claimed unlawful sale of cannabis products) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Complainant has submitted compelling arguments that the Respondent has engaged in a pattern of bad faith conduct, and in blatantly illegal activities.

With respect to the pattern of bad faith conduct, the Complainant draws attention to the prior panel decision involving the domain name <astropinkofficial.com>, in circumstances which are strikingly similar to the present matter (*Andrea Montella v. gilda copertino*, WIPO Case No. [D2024-0037](#)). In that case, the Panel determined that the confusingly similar domain name had been registered and used in bad faith in association with the operation of an unlicensed unlawful online cannabis retail store, serving the Toronto market. On February 21, 2024, that Panel issued its decision transferring the domain name in question to the Complainant, and the transfer occurred on March 14, 2024. One day later, the Respondent herein registered the domain name in dispute, having a nearly identical composition (that is, <astropinkofficialdelivery.com> as compared to the prior version <astropinkofficial.com>), and set up a website with virtually identical content to continue its retail services serving the same market with the same ASTROPINK branded products. Tellingly, both websites display the same telephone contact number and email address for purposes of purchases. The circumstances support the inference that the Respondent has engaged in a deliberate, continuing pattern of bad faith conduct calculated to maintain its unlawful business and the targeting of the Complainant, in spite of the Complainant's efforts to enforce its rights.

Paragraph 4(b) of the Policy also 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.

Panels have held that the use of a domain name for illegal activity, (here, passing off as the Complainant and the claimed unlawful operation of an unlicensed online store for cannabis products) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. As outlined above, the Respondent has used the disputed domain name to operate a retail business in a manner which is contrary to the legal and regulatory framework in place in Ontario to govern sales of cannabis.

The Complainant also relies on conduct by the Respondent characterized as copyright infringement; namely the reproduction of an artistic work titled "Astropink Design", which was registered in Canada (registration No. 1,204,524 dated June 30, 2018), and reproduced on the Respondent's website on its product packaging, without authorization. In the circumstances, and noting the absence of any explanation by the Respondent, these infringing activities also support a finding of deliberate targeting consistent with bad faith.

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 <astropinkofficialdelivery.com> be transferred to the Complainant.

*/Christopher J. Pibus/*

**Christopher J. Pibus**

Sole Panelist

Date: January 6, 2025