

## **ADMINISTRATIVE PANEL DECISION**

Manoucher Yektai LLC v. Dmytro Butenko, Tristore Avico Trade  
Case No. D2024-4858

### **1. The Parties**

Complainant is Manoucher Yektai LLC, United States of America (“United States”), represented by ESCA Legal, United States.

Respondent is Dmytro Butenko, Tristore Avico Trade, United States.

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

The disputed domain name <manoucher-yektai.com> (the “Domain Name”) is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 25, 2024. On November 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 27, 2024, the Registrar transmitted by email to the Center its verification response confirming that 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 Respondent of the Complaint, and the proceedings commenced on December 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 29, 2024. Respondent sent email communications to the Center on December 9 and 23, 2024. Accordingly, the Center notified the Parties about the Commencement of Panel Appointment Process on January 6, 2025.

The Center appointed Robert A. Badgley as the sole panelist in this matter on January 10, 2025. 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

According to the Complaint:

“Manoucher Yektai is a globally recognized painter, known for his modern abstract paintings with Persian influence. After his death in 2019, the Manoucher Yektai LLC, also registered as the Estate of Manoucher Yektai (referred to as the “Complainant”), was appointed as the rightful owner of his MANOUCHER YEKTAI and YEKTAI name and marks (collectively referred to as “MANOUCHER YEKTAI Marks”), used in connection with his paintings, artworks, exhibitions and events conducted in connection with the artist’s paintings.” [...]

“Manoucher Yektai was an Iranian born artist, later based in New York, is recognized worldwide for his fusion of Persian and Western style of modern paintings. Ever since the 1950s, his works have been widely exhibited in galleries and museums alongside prominent artists of his time, in major cities such as New York, London and Tokyo. He is particularly known for his active involvement in the broadening of the Iranian diaspora and his contribution towards the growing appreciation of Iranian artistic works in the international sphere. His works are often compared alongside Jackson Pollock, Mark Rothko, Willem de Kooning and other abstract expressionist movement artists. This also led him to be known as one of the founding members of the New York School of Abstract Expressionism, with his works often influenced by Fauvists and Cézanne. Some of his prominent works include ‘Lamentation’, ‘Blue and Yellow Composition’, ‘The Persian Garden Series’, ‘The Tower of Silence’ and many more. His notable works, such as pieces from his ‘Untitled’ series, are often auctioned off for 100,000 USD or higher. His collections have been displayed in prominent museums and international institutions across the world such as the Museum of Modern Art (MoMA) in New York, Galerie Maeght in Paris and Takahashi Collection in Tokyo. His paintings displayed in the Tehran Museum of Contemporary Art in Iran were also acquired by the last Empress of Iran, Farah Pahlavi. Yektai’s legacy carries on even after his death and his works are handled by the Complainants. His works are still displayed in solo and group exhibitions across the world, including exhibitions held in the Whitney Museum of American Art, New York in June 2019, Jameel Arts Center in Dubai from September 2023 to March 2024, Carnegie Museum of Art in Pennsylvania in 2023, the most recent exhibition in the Karma Gallery in New York in November 2024.”

“Yektai’s works have been recognized by famous art historians like Donna Stein since 1998. His interviews and articles on his work, exhibitions and life have garnered much attention, including articles by publications such as the New Yorker, Artforum and Art in America, the Tehran Times and Iran Daily. In his memory, the Karma Gallery has also published a biography, “Manoucher Yektai” written by Fereshteh Daftari, Media Farzin, Robert Slifkin, and Biddle Duke and will be publishing the ‘Manoucher Yektai Landscapes’ by Suzanne Hudson, Paul Galvez in 2024.”

Annexed to the Complaint are various articles and screenshots of web pages discussing Yektai and his paintings, reporting on art exhibitions featuring his works, announcing auctions of his paintings, and so forth.

On November 22, 2024, Complainant filed with the United States Patent and Trademark Office (“USPTO”) an application to register the word mark MANOUCHER YEKTAI, USPTO Serial No. 98867193, in Class 16 for “Paintings; Art prints” and in Class 41 for “Art exhibitions; Philanthropic services, namely, lending art to art institutions”, with a January 1, 1955, date of first use in commerce.

Complainant owns the domain name <yektai.com> and uses that domain name to host a website featuring Yektai’s art work and providing information about current and recent exhibitions of his work.

The Domain Name was registered on May 28, 2024. The Domain Name currently resolves to an error page. For a time, however, the Domain Name resolved to a website purportedly operated by the “Manoucher

Yektai Foundation” which features Yektai and his art work, and invites visitors to provide their contact information.

According to Complainant:

“Respondent is using the manoucher-yektai.com website, to impersonate as the Manoucher Yektai Foundation, providing information on Yektai’s works and displaying images of his art works, in an attempt to get internet users’ personal information. The Domain Name is identical to the MANOUCHER YEKTAI Marks and can be seen as an attempt to confuse followers of Yektai’s works, to provide their personal information for the purposes of getting more information about the artist’s legacy from the impersonating Respondent.”  
[...]

“The Domain Name resolves to a website that contains content that suggests falsely that the website is by the Manoucher Yektai Foundation that aims towards organizing events, exhibitions and activities on Yektai’s artworks and collaborates with educational institutions for the same. The contents of the page falsely suggests that the website is approved, affiliated or authorized by the artists or the Complainant, when [...] the Complainant has not authorized or licensed the use of the MANOUCHER YEKTAI Marks or close variations of the same for the Respondent’s use with the Domain Name.”

## **5. Parties’ Contentions**

### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

### **B. Respondent**

Respondent did not formally reply to Complainant’s contentions. On December 9, 2024, Respondent sent an email to the Center, stating:

“I don’t understand what is the problem? Can you tell me in few words?”

On December 23, 2024, Respondent sent an email to the Center, stating:

“manoucher-yektai.com. — this site and domain removed Is it all ok?”

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the 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 Complainant’s trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.7.

The Panel concludes that Complainant has common law rights in the trademark MANOUCHER YEKTAI through use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The Domain Name entirely incorporates the mark and inserts a hyphen between the words. The Panel concludes that the mark remains clearly recognizable within the Domain Name despite this minor change.

Complainant has established Policy paragraph 4(a)(i).

## **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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.

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 often primarily within the knowledge or control of the respondent. Thus, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production 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.

The Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Respondent has not come forward in this proceeding to refute any of the plausible allegations made by Complainant, or challenge any of the evidence put forth by Complainant. The content of Respondent’s website makes it clear that Respondent was well aware of Complainant’s MANOUCHER YEKTAI trademark when registering the Domain Name. In the Panel’s view, Respondent has attempted to hold itself out as being affiliated with Complainant or the late artist Yektai, which is false. It is also undisputed that Respondent has invited visitors to provide their personal information. The foregoing conduct does not invest Respondent with rights or legitimate interests vis-à-vis the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

## **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. On this record, the Panel finds it clear that Respondent targeted Complainant's MANOUCHER YEKTAI mark when registering the Domain Name, and has used the Domain Name to set up a website impersonating Complainant or suggesting an affiliation with Complainant.

Although there is no clear evidence of Respondent seeking commercial gain via its website, the solicitation of personal information from website visitors arouses some suspicion in that direction. Respondent has not articulated any legitimate reason for registering and using the Domain Name. On this record, the Panel finds bad faith registration and use of the Domain Name within the meaning of the above-quoted Policy paragraph 4(b)(iv). The fact that the Domain Name currently resolves to an error page does not prevent a finding of bad faith.

Complainant has established Policy paragraph 4(a)(iii).

## 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 Domain Name <manoucher-yektai.com> be transferred to Complainant.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: January 17, 2025