

## **ADMINISTRATIVE PANEL DECISION**

Molly Sims v. Mark Leonidovich Dobrovolskiy / Priavte person  
Case No. D2022-1002

### **1. The Parties**

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

The Respondent is Mark Leonidovich Dobrovolskiy / Priavte person, Russian Federation.

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

The disputed domain name <mollybymollysims.biz> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 23, 2022. On March 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 24, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 30, 2022, 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 April 2, 2022.

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 April 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 2, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on May 11, 2022. 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 well-known model, actor, author and public figure, who has traded under her name “Molly Sims” for over two decades.

The Complainant operates her own website at “www.mollysims.com”.

The Complainant’s agent owned the disputed domain name from September 25, 2013, until it lapsed on or around September 24, 2021.

The Respondent registered the disputed domain name on December 15, 2021.

As of March 2, 2022, the disputed domain name resolved to a Thai language website containing apparently meaningless, auto-generated blog or news-type articles and including several pay-per-click (“PPC”) links to third-party pornography, dating and matchmaking services.

#### **5. Parties’ Contentions**

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

The following is a summary of the Complainant’s contentions.

The Complainant has obtained a significant degree of recognition for her professional services rendered under her personal name, which distinguishes her services from those of others. The Complainant has thereby established common law trade mark rights in her name.

The disputed domain name is confusingly similar to the Complainant’s trade mark as it incorporates her name in its entirety as well as repeating her first name and adding the non-distinctive term “by”.

The Respondent lacks rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

The Complainant did not authorise the Respondent to register the disputed domain name.

The Respondent cannot acquire rights or legitimate interests in the disputed domain name because the Respondent is intentionally trading on the Complainant’s fame.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services or that the Respondent is making a legitimate, noncommercial, or fair use of the disputed domain name.

The Respondent’s use of the disputed domain name for a website equivalent to a PPC site does not constitute rights or legitimate interests. On the contrary, the Respondent’s use of the Complainant’s name to profit from click-through revenue constitutes bad faith.

The Respondent had notice of the Complainant’s rights as the Complainant previously owned the disputed domain name. Also, the Respondent registered it after the Complainant became famous.

The Respondent's registration and use of the disputed domain name without the Complainant's authority is of itself sufficient to constitute bad faith registration and use.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has established unregistered trade mark rights in her name "Molly Sims" based on the evidence of her use of her name in commerce as a distinctive identifier of her goods and/or services.

Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the disputed domain name consists of the Complainant's distinctive trade mark, which remains readily recognisable within the disputed domain name, plus the additional phrase "Molly by", which does not prevent a finding of confusing similarity as explained above.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

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

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, 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. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the disputed domain name has been used for a website with meaningless, auto-generated blog or news-type articles as well as a number of PPC links, unrelated to the disputed domain name. In the Panel's view such use of the disputed domain name could not of itself confer rights or legitimate interests.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

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

In the Panel's view, it is obvious that the Respondent was aware of the Complainant when it registered the disputed domain name, which reflects the Complainant's highly distinctive name and trade mark.

In the Panel's view, by using the disputed domain name, comprising the Complainant's distinctive trade mark, in connection with a webpage with PPC links, the Respondent has intentionally created a likelihood of confusion with the Complainant's trade mark with a view to profiting therefrom in accordance with paragraph 4(b)(iv) of the Policy.

The likelihood of confusion is not diminished by the probability that, given the nature of the content on the website, users arriving at the Respondent's site will realise that the site is not connected with the Complainant. Paragraph 4(b)(iv) of the Policy is concerned with the intentional attracting of Internet users. Here, the disputed domain name creates an implied risk of affiliation with the Complainant, and the Respondent profits from at least some of the traffic intended for the Complainant.

### **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, <mollybymollysims.biz>, be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: May 25, 2022