

ADMINISTRATIVE PANEL DECISION

Morgan Wallen v. Domains By Proxy, LLC / xu zengyi, SOUFEEL JEWELRY LIMITED

Case No. D2022-2444

1. The Parties

The Complainant is Morgan Wallen, United States of America ("United States"), represented by Loeb & Loeb, LLP, United States.

The Respondent is Domains By Proxy, LLC, United States / xu zengyi, SOUFEEL JEWELRY LIMITED, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <morganwallenmerch.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 July 5, 2022. On July 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 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 July 7, 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 amendment to the Complaint on July 12, 2022.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint, and the proceedings commenced on July 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 9, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on August 25, 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 country music singer and songwriter, who made his public debut on The Voice, a singing reality competition television series in the United States. Since then, the Complainant has been successful in the music industry and was awarded multiple country music awards.

The Complainant is the owner of the United States Trademark Registration No. 6,173,560 for MORGAN WALLEN, registered on October 13, 2020, and providing trademark protection for goods and services in International Classes 9, 25, and 41, particularly for musical sound recordings, clothing, and music and entertainment related services. This trademark also is the legal birth name of the Complainant.

The Complainant holds and operates its official website at “www.morganwallen.com”. On his website, the Complainant sells tickets for his music events, but also various genuine merchandise.

The disputed domain name was registered on April 7, 2022.

The Respondent is reportedly located in Hong Kong, China.

The disputed domain name resolves to a website in the English language, which is used for allegedly offering merchandising products of the Complainant. The website itself provides the impression as if it is operated by the Complainant himself, particularly by prominently using the Complainant's MORGAN WALLEN trademark and personal images of the Complainant, without any visible disclaimer describing the (lack of) relationship between the Parties. Further, the website does not contain any name and contact details of the operator.

5. Parties' Contentions

A. Complainant

The Complainant is of the opinion that the disputed domain name is confusingly similar to its MORGAN WALLEN trademark.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. In particular, it is argued that the Respondent has no license or alike to use the Complainant's trademark.

Finally, it is argued that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant believes that the Respondent must have known the Complainant's MORGAN WALLEN trademark when registering the disputed domain name and is using the Complainant's trademark on the website linked to the disputed domain name without authorization.

B. Respondent

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

6. Discussion and Findings

According to paragraphs 14(a) and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no Response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademark 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.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

Further, it is noted that an independent search by visiting the Internet site linked to the disputed domain name has been performed by the Panel. The competence of the Panel to perform such independent search is undisputed and in line with previous UDRP decisions, e.g., *Hesco Bastion Limited v. The Trading Force Limited*, WIPO Case No. [D2002-1038](#).

For the evaluation of this case, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has registered trademark rights in the mark MORGAN WALLEN by virtue of a United States Trademark Registration, as described above.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered MORGAN WALLEN trademark, as it fully incorporates the Complainant's trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. The mere addition of “merch”, which is apparently an abbreviation of “merchandise”, does not, in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain name according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's MORGAN WALLEN trademark in a confusingly similar way within the disputed domain name, particularly with no license or alike. There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a response, the Respondent has also failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c), or other evidence of rights or legitimate interests in the disputed domain name.

By visiting the website, the Panel saw for itself that the Respondent is using the disputed domain name to offer unauthorized merchandising products under the Complainant's personal name and trademark MORGAN WALLEN. In line with section 2.13 of the [WIPO Overview 3.0](#), the Panel is of the opinion that the sale of unauthorized and, hence, illegal goods can under no circumstances confer any rights or legitimate interests on the Respondent. While some panels have recognized the limited rights of reseller, distributors, and service providers using a domain name containing the complainant's trademark, such use is subject to the criterion enumerated under the "Oki Data test" codified in section 2.8.1 of the [WIPO Overview 3.0](#). Applied here, the website to which the disputed domain name resolves creates the impression it is operated by the Complainant and fails to offer any disclaiming language as to its relation (or lack thereof) to the Complainant, and thus fails the "Oki Data test".

Furthermore, the Panel is of the opinion that the composition of the disputed domain name (by combining the Complainant's personal name and trademark MORGAN WALLEN with the word "merch", apparently standing for "merchandise") carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#).

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel has no doubt that the Respondent has registered the disputed domain name in bad faith. At the date of registration, the Complainant's MORGAN WALLEN trademark (which is the personal name of the Complainant at the same time) was already registered and widely known. Moreover, the use to which the disputed domain name has been put (further discussed below) clearly demonstrates the Respondent's awareness of the Complainant.

As to the use of the disputed domain name in bad faith, the Panel notes that the disputed domain name resolves to a website that promotes unauthorized merchandising products under the trademark MORGAN WALLEN. In view of the Panel, this clearly indicates the Respondent's bad faith in targeting and freeriding the Complainant's MORGAN WALLEN trademark and underlying reputation to attract Internet users for the Respondent's illegitimate commercial gain. The Panel is convinced that the Respondent intentionally tries to misrepresent itself as the Complainant and to attract, for commercial gain and possibly even fraudulent

purposes, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of its website.

Taking all facts of the case into consideration, the Panel has no difficulty in assessing the present case as a typical cybersquatting case, which the UDRP was designed to stop. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 <morganwallenmerch.com> be transferred to the Complainant.

/Kaya Köklü/
Kaya Köklü
Sole Panelist
Date: September 7, 2022