

ADMINISTRATIVE PANEL DECISION

Anniversary University, LLC v. The History Factory
Case No. D2023-2180

1. The Parties

The Complainant is Anniversary University, LLC, United States of America ("United States"), represented by Lerner David LLP, United States.

The Respondent is The History Factory, United States.

2. The Domain Name and Registrar

The disputed domain name <anniversaryuniversity.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 May 17, 2023. On May 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 27, 2023, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on June 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 10, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on July 18, 2023. 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 Complainant¹ is in the business of providing services to organizations that help enable such organizations plan and execute successful milestone anniversaries. It owns the trademark ANNIVERSARY UNIVERSITY, which it has registered in the United States (Reg. No. 5,711,056, containing a claimed date of first use of May 1, 2015 and a date of first use in commerce of February 2, 2018).

According to the Whois records, the disputed domain name was registered on October 24, 2017. The Respondent has used the disputed domain name to redirect Internet users to the Respondent's website "anniversarymarketingsummit.com", which the Complainant asserts the Respondent uses to offer services that are similar to those services that the Complainant offers.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

The Panel considers the following facts asserted by the Complainant as pertinent to the Panel's determination in this matter:

In February 2015, the Complainant had a meeting with the then-Vice President, Executive Communications for Mastercard, Douglass Hatcher, at Morton's Restaurant in White Plains, NY. In this meeting, according Mr. Hatcher (as confirmed in his affidavit which the Complainant included as an Annex), the Complainant described her business plans as "like an Anniversary University, providing executives with a best practice learning they could get nowhere else".

On February 16, 2017, the Complainant established a "working relationship" with the Respondent. The Complainant does not elaborate on the nature of this working relationship, nor is there information otherwise in the record that sheds light on the nature of this working relationship. Later that year, on August 24, 2017, the Complainant participated in a conference call the Complainant had arranged among a New York Times columnist, Jason Dressel (a representative of the Respondent), and the Complainant. The Complainant asserts that during the call, she reminded the columnist of a 2014 call the two of them had had, in which she had invited him to attend one of her company's events, which she described during that 2014 call as "being like an Anniversary University". From these facts, the Complainant argues that Mr. Dressel (and by implication, the Complainant) would have known of the Complainant's 2014 use of the mark ANNIVERSARY UNIVERSITY because he heard the Complainant remind the columnist of a call the Complainant and the columnist had some three years earlier.

¹ The name of the Complainant appearing in the case caption is Anniversary University, LLC. Throughout the Complaint, however, the Complainant is referred to various times in the way that one would refer to an individual (e.g., "Complainant founded Milestone Marketing, LLC..." and "...in a meeting between Complainant and Douglas Hatcher..."). That individual is not identified in the Complaint. The Panel notes that the trademark registration certificate included in the record lists one Lisa Alonge as the trademark registrant. This fact, along with references to a "Lisa" in a sworn affidavit included in the case file, leads the Panel to conclude that the language of the Complaint from time to time conflates Ms. Alonge with her company Anniversary University, LLC. Such circumstances could reasonably trigger the Panel to issue a Procedural Order seeking more information about the listed Complainant Anniversary University, LLC's purported ownership of the trademark that is the subject of the asserted trademark registration. But given the Panel's determination herein that there is insufficient evidence of use of the mark (by anyone) prior to the registration of the disputed domain name, the issues of the Complainant's identity and ownership of the trademark registration are essentially moot. In this decision, the term "the Complainant" should be construed to refer to either Ms. Alonge or Anniversary University, LLC, as the context requires.

On October 24, 2017, the Respondent registered the disputed domain name. A few weeks later, on November 13, 2017, the relationship between the Complainant and the Respondent “dissolved”. Again, the Complaint lacks detail as to the nature of the relationship or how or why it ended. On January 11, 2018, the Complainant attempted to register the disputed domain name but noticed that the Respondent had already registered it.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a 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

This the first element functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. 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. *Id.* This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the ANNIVERSARY UNIVERSITY mark by providing evidence of its trademark registration.

The disputed domain name incorporates the ANNIVERSARY UNIVERSTIY mark in its entirety. This is sufficient for showing confusing similarity under the Policy. Accordingly, the Panel finds that the Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

Because the Panel finds that the Complainant has not established the third element under the Policy, it declines to address the question of rights or legitimate interests of the Respondent in the disputed domain name.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. 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. [WIPO Overview 3.0](#), section 3.8.1.

A key issue in this case is whether the Complainant’s rights in the mark ANNIVERSARY UNIVERSITY had accrued as of October 24, 2017, the date on which the Respondent registered the disputed domain name. The Panel notes that the Complainant’s United States registration certificate lists a claimed date of first use in commerce of February 3, 2018 (several months after the disputed domain name was registered). The Panel does not find the Complainant’s assertions of use of ANNIVERSARY UNIVERSITY as a mark prior to

October 24, 2017 to carry sufficient weight. Tasked with establishing a timeline for the first use of the mark, the Complainant mustered the recollection by an acquaintance (Mr. Hatcher) of a conversation in a restaurant in 2014 wherein the Complainant described her services as being “like an Anniversary University”. And the only other purported evidence of use of the mark is the Complainant’s own assertions as to what another person (Mr. Dressel) is presumed to have recalled from a 2017 phone call wherein the Complainant mentioned something that was said between other participants of the phone call on another call three years prior. That is circumstantial evidence that would require robust cross-examination and verification (and if true could support a general assessment as to the Respondent’s knowledge and motivations) but is not strong evidence of trademark use. It falls well short of the types and amounts of evidence generally required to show rights in an unregistered mark as articulated in [WIPO Overview 3.0](#), section 1.3 (relevant evidence includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys).

Because the Complainant has not established that it had rights in the ANNIVERSARY UNIVERSITY mark when the disputed domain name was registered, the Panel cannot find that the disputed domain name was registered in bad faith. Accordingly, the Panel finds that the Complainant has not established this third element under the Policy.

Moreover, the Panel is concerned that this situation may be one in which there is a dispute between the Complainant and the Respondent that falls outside the scope of the Policy. Panels have tended to deny complaints not on the merits but on the narrow grounds that the dispute between the parties exceeds the relatively limited “cybersquatting” scope of the Policy and would be more appropriately addressed by a court of competent jurisdiction. [WIPO Overview 3.0](#), section 4.14.6. Given the assertions of the Complainant that she entered into a relationship with the Respondent that dissolved not far in time from the registration of the disputed domain name, the Panel suspects there is more to the story than mere cybersquatting. Accordingly, the Panel finds such grounds likewise support a denial of the Complaint.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: August 16, 2023