

ADMINISTRATIVE PANEL DECISION

Jacques Bermon Webster II also known as Travis Scott, and LaFlame Enterprises, Inc. v. Brahim Fateine, Probuzzing
Case No. D2024-0932

1. The Parties

The Complainant is Jacques Bermon Webster II also known as Travis Scott, and LaFlame Enterprises, Inc., United States of America (“United States”), represented by Kia Kamran P.C., United States.

The Respondent is Brahim Fateine, Probuzzing, Morocco.

2. The Domain Name and Registrar

The disputed domain name <astroworlddrop.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 2, 2024. On March 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 4, 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 (REDACTED FOR PRIVACY, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 6, 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 amendment to the Complaint on March 12, 2024.

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 March 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 2, 2024. The Respondent sent an email communication to the Center on March 14, 2024, to which the Center acknowledged receipt on March 14, 2024.

The Center appointed Antony Gold as the sole panelist in this matter on April 8, 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, popularly known as Travis Scott, is a recording artist who has been active in the field of entertainment since 2009. Mr Scott has had four number-one hits in the United States Billboard Hot 100 and his Spotify official page counts more than 60 million monthly listeners. Mr Scott's third studio album was entitled "Astroworld" (in tribute to an identically-named former amusement park in Houston, Texas, United States) and Mr Scott has previously organized an annual "Astroworld" music festival.

Mr Scott is the owner of the LaFlame Enterprises, Inc. which, in turn is the owner of many trade marks in multiple countries for the term ASTROWORLD. These include, by way of example only, United States service mark, registration number 5701553 in class 41, registered on March 19, 2019.

The disputed domain name was registered on March 22, 2020. It has previously resolved to a website containing biographical information about Mr Scott's musical career and the availability of presumably ASTROWORLD-branded merchandise. A variety of merchandise and apparel purportedly available for sale, emblazoned with the term ASTROWORLD were displayed. Part of the website was headed "Astroworld merch" which contained a section; "History of Travis Scott's Astroworld". The disputed domain name presently resolves to a "Coming Soon" placeholder page containing lorem ipsum text.

5. Parties' Contentions

A. Complainant

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

- the disputed domain name is identical or confusingly similar to a trade mark service mark in which it has rights. The Complainant refers to its registered marks for ASTROWORLD, including the mark in respect of which full details are given above, and says that the disputed domain name contains its mark in full and the mere addition to it of the term "drop" does not eliminate any possibility of confusion;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the name ASTROWORLD and is not authorized or licensed by the Complainant to use its mark in, or as part of, any trade mark or domain name. Nor can the Respondent claim any legitimate, noncommercial or fair use of the disputed domain name as it is being used for the sale of counterfeit merchandise. Moreover, the Complainant's image is prominently displayed on the home page of the website to which the disputed domain name resolves, misleading Internet users into believing that the Respondent is somehow affiliated with the Complainant;
- the disputed domain name was registered and is being used in bad faith. The fact that the Complainant registered the disputed domain name, incorporating the Complainant's well-known ASTROWORLD trade mark, is in itself a clear indication of bad faith. In choosing the disputed domain name the Respondent intended to target the value in the Complainant's name and mark and benefit financially from it. Further, the Respondent registered the disputed domain name primarily for the purpose of disrupting the Complainant's business by selling counterfeit products branded as those of the Complainant. The use of the disputed domain name is intended to misdirect consumers to the Respondent's website and induce them into believing that the Respondent's products are associated with, or authorized by, the Complainant. This demonstrates that the disputed domain name was intentionally registered to create a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its website.

B. Respondent

The Respondent did not file a substantive response to the Complainant's contentions. However, on March 14, 2024, the Respondent sent an email to the Center stating; "Hello I have no idea about this email So these people will oppose [sic] anything that has astroworld?? Even if the word astroworld exists before the birth of [the Complainant]. Really u r serious?"

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a substantive response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that a complainant proves each of the following three elements in relation to a domain name in order to succeed in its complaint:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests with respect to 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 the Complainant's trade mark and the disputed domain name; see the [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of its ASTROWORLD marks for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. With reference to the Respondent's email of March 14, 2024 to the Center, the Complainant's mark establishes its rights under the Policy, irrespective of the fact that there have been prior users of the term "astroworld".

As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in respect of the disputed domain name, is usually disregarded when assessing confusing similarity; see the [WIPO Overview 3.0](#), section 1.11.1. The Complainant's ASTROWORLD mark is reproduced in its entirety within the disputed domain name and is clearly recognizable within it; see the [WIPO Overview 3.0](#), section 1.7. The addition of the term "drop" to the disputed domain name does not prevent a finding of confusing similarity between it and the Complainant's mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.8.

For the above reasons, based on the available record, the Panel finds that 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 by which a respondent may demonstrate rights or legitimate interests in a domain name. Whilst 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 impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element; see the [WIPO Overview 3.0](#), section 2.1.

Having reviewed the 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. 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. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name, or a name corresponding to the disputed domain name, in connection with a bona fide offering of goods or services; see paragraph 4(c)(i) of the Policy, and the [WIPO Overview 3.0](#), section 2.2. Rather, the disputed domain name has been used to host a website which purports to be operated or authorized by the Complainant and which sells apparel which bears the Complainant's ASTROWORLD trade marks. Previous UDRP panels have held that the use of a domain name for illegal activity, including phishing, distributing malware, impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent; see the [WIPO Overview 3.0](#), section 2.13.1 and, by way of example, *Zions Bancorporation, N.A. v. George Gillespie*, WIPO Case No. [D2022-3197](#). The Panel also takes into account the fact that the Respondent has chosen not to challenge the Complainant's assertions of dishonest intent. Having regard to the fact that the disputed domain name does not presently resolve to an active website, non-use of it, self-evidently, does not comprise use in connection with a bona fide offering of goods and services;
- there is no evidence in the record that the Respondent has been commonly known by the disputed domain name. In this respect, see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

For the above reasons, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The record shows that, within several months after the Respondent's registration of the disputed domain name in March 2020, it resolved to a website, the content of which suggested it was operated by, or with the authority of, the Complainant. This suggests both an awareness by the Respondent of Complainant's ASTROWORLD mark as at the date of registration of the disputed domain name and an intention on its part to take unfair advantage of it. It is well-established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration and where the domain name is put to a misleading use can, by itself, establish a presumption of bad faith; see, for example, *IIC-INTERSPORT International Corporation GmbH v. Eduard Voiculescu*, WIPO Case No. [D2021-1021](#). The Respondent's registration of the disputed domain name is accordingly in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. The use to which the Respondent has put the disputed domain name falls within this circumstance in that the content of its website will have misled

Internet users into believing that it was operated, or authorized, by the Complainant. Such a belief will have been reinforced because of the confusing similarity between the disputed domain name and the Complainant's ASTROWORLD trade mark; see *Delsey v. Lenna Wehner*, WIPO Case No. [D2023-4648](#) and *Jazz Basketball Investors, Inc. v. Whoisguard Protected, Whoisguard, Inc. / Big Shen, Joan Bristol*, WIPO Case No. [D2017-0031](#).

Whilst the disputed domain name now resolves to a "coming soon" web page, from the inception of the UDRP, panelists have found that the non-use of a domain name (which includes a "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding; see the [WIPO Overview 3.0](#), section 3.3 and by way of example, *Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#). Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use, (iii) the respondent's concealing its identity or use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put.

Applying these factors to the circumstances of these proceedings: (i) the Complainant has provided evidence which establishes, for the purpose of the Policy, that its ASTROWORLD trade mark is distinctive in the context of the goods and services for which it is registered; (ii) the Respondent has not provided a response to the Complaint nor is there any evidence of actual or contemplated good faith use of the disputed domain name; (iii) the Respondent has sought to conceal its identity through its use of a privacy service; and (iv) there is no plausible good faith use to which the disputed domain name can be put by the Respondent. In the circumstances of this case, therefore, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. See, for example, *Gallery Department, LLC v. ahmad Akram*, WIPO Case No. [D2023-3455](#).

Having reviewed the record, and for the reasons set out above, the Panel finds the Respondent's registration and use of the disputed domain name has been in bad faith.

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 <astroworlddrop.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: April 22, 2024