

ADMINISTRATIVE PANEL DECISION

Afinarte Music LLC v. Registration Private, Domains By Proxy, LLC / OS, be cazzi

Case No. D2022-1304

1. The Parties

Complainant is Afinarte Music LLC, United States of America (“United States”), represented by The Myers Law Group, United States.

Respondent is Registration Private, Domains By Proxy, LLC, United States / OS, be cazzi, United States.

2. The Domain Name and Registrar

The disputed domain name <afinarte.com> (the “Domain Name”) 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 April 11, 2022. On April 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email to Complainant on April 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. On April 14, 2022, Respondent sent to the Center and informal communication stating: “Not sure what’s this about. Please stop the spam. ASAP.” Complainant filed an amended Complaint on April 14, 2022. On April 17, 2022, Respondent sent an email to the Center, claiming that the Domain Name was purchased by a third party entity called Ekcho market me llc (“Ekcho”), and requested further information regarding the proceeding (copying such third party to the email).

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 Respondent of the Complaint, and the proceedings commenced on April 19, 2022. In accordance with the Rules, paragraph 5, the due

date for Response was May 9, 2022. Respondent sent several informal communications to the Center on April 21, 2022. The apparent principal of the abovementioned third-party entity sent an email to the Center on April 22, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on May 29, 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

Founded in 2013, Complainant describes itself as “a world-renowned Latin record label that develops musical talent and represents/promotes those artists’ recorded music and live-performances.” Annexed to the Complaint are a number of articles from music industry publications, such as *Billboard*, which refer to Complainant as a noteworthy participant in the field of Latin music promotion and production.

Complainant markets its services under the mark AFINARTE MUSIC. This mark is used, for example, in connection with Complainant’s musical offerings available via the famous Spotify platform. Complainant also maintains a fairly robust social media presence, as is demonstrated through screenshots annexed to the Complaint.

Complainant holds a trademark registration for AFINARTE MUSIC with the Mexican Institute of Industrial Property. This mark was applied for on November 16, 2017, and registered on March 7, 2018 (Reg. No. 1855765).

The Domain Name was registered on October 20, 2018. It is not clear from the record whether Respondent was the original registrant. Complainant alleges that Respondent was the original registrant of the Domain Name, but offers no evidence to prove this. Respondent does not deny the allegation that it was the original registrant of the Domain Name. Ultimately, the answer to this question is not essential to the Panel’s disposition of this case.

According to Complainant:

“In December 2020, Afinarte Music executives Luis Magallon, Eddie Magallon, Ivan Sandoval, and Miguel Serrano met with a group of individuals who claimed they could identify and implement ways for Afinarte Music to better merchandize and brand itself. Amongst this group was an individual who identified himself as Mr. Ben Cazares [note the name of Respondent in this proceeding is Be Cazzi] and another who identified himself only as ‘Ozzy’ but whom Afinarte Music believes is Mr. Oswaldo Martinez. Mr. Cazares held himself out as being the group’s attorney and Ozzy as its e-commerce developer. This meeting took place at Afinarte Music’s business headquarters [in] Anaheim, California, U.S.A.”

“Subsequent investigation has revealed that Mr. Ben Cazares is a lawyer who worked from 2014 through 2020 as an Operations manager for a web development company called [...].”

“Afinarte Music found the initial pitch from the group too aggressive, prompting Mr. Cazares to comment: ‘If I don’t get the whole deal, then I’m not going to take it.’”

“The same group of Afinarte Music executives later met at the company’s headquarters in February 2021 for another presentation with ‘Ozzy’ but without Mr. Cazares present. Although Afinarte Music was impressed by the presentation, it was made clear to Ozzy that Afinarte Music was making no commitment to use his group’s services. Instead, Afinarte Music would consider it while on tour with its musical acts in South America over the succeeding months.”

“Later in March 2021 Afinarte Music executive Miguel Serrano received a call from Ozzy, who told him that the group was ‘eager to get started’ and had gone forward and ‘grabbed’ the [Domain Name]. Ozzy further informed Mr. Serrano that his group wanted a percentage of the backend participation on any e-commerce that occurred on the website associated with the disputed domain name. Mr. Serrano made it clear to Ozzy that Afinarte Music had never agreed to retain the group’s services and that it was not interested in the business arrangement being demanded by the group. This drew a hostile response from Ozzy, asserting that Afinarte Music had ‘waisted a lot of our time.’”

On July 19, 2021, Complainant received a text message from “Ozzy,” advising that the Domain Name had been put up for sale. Annexed to this text was a screenshot from the Registrar, indicating that the Domain Name was available for purchase at the price of USD 169,000. According to Complainant, it responded to this text by stating that it “would not be extorted into buying” the Domain Name.

Complainant alleges that it then reached out to the Registrar, who advised as follows: “The owner has this valued according to [text omitted from Complaint] fact there is a record label with this group.” The Registrar allegedly asked Complainant to “come up with a 5-figure offer to present to the owner.”

Respondent does not dispute any of the foregoing allegations.

On April 22, 2022, after this proceeding was initiated, the Center received an email from a representative of Ekcho (mentioned above in the “Procedural History” section), which stated:

“I’m not sure what this is about, I purchased this domain January 27th 2022. We are mid-development and this is stalling our company’s access to the domain.

Do I need to get an attorney for this?

If so, where are the annexes and the updates to the complaint so that I can provide proper info to the attorney.

I’m cc’ing Mr. Benjamin Cazares in this matter. My purchase contract showed no liabilities or issues with this domain existed, so where are these frivolous disputes coming from?

I do not know this company “Afinarte Music” and my focus and interest in the domain is completely unrelated to music or production. We are set to launch this domain July 2022.

Please advise who I can call to clarify all of this, at WIPO. Any and all information is appreciated.”

5. Parties’ Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not file a formal Response replying in substance to Complainant’s contentions. Respondent only sent informal communications to the Center requesting further information about the proceeding. Another party (referred to herein as “Ekcho”), purportedly a new purchaser of the Domain Name from Respondent, submitted an email to the Center on April 22, 2022. The entire substance of that email is quoted in the previous section.

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

The Panel concludes that Complainant has rights in the trademark AFINARTE MUSIC through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The dominant element of the mark – AFINARTE – is entirely reproduced in the Domain Name.

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.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward in this proceeding to dispute the allegations and evidence put forth by Complainant, namely, that Respondent registered the Domain Name in connection with Respondent's effort to enter into some sort of marketing partnership with Complainant, and then offered to sell the Domain Name to Complainant for a steep profit after it became apparent that Complainant was not interested in a business relationship with Respondent. It appears to the Panel that Respondent registered the Domain Name, without Complainant's knowledge or consent, to use it as leverage in its efforts to enter into some type of marketing arrangement with Complainant. That act and that motive do not give rise to a legitimate interest in the Domain Name.

With regard to the purported subsequent purchaser of the Domain Name, Ekcho, the Panel concludes that, even if Ekcho legitimately and innocently believed that it had purchased the Domain Name from Respondent (a finding which the Panel, on this record, is not prepared to make), it is irrelevant to this proceeding. When this proceeding was initiated, Respondent was the listed registrant of the Domain Name. It is the Panel's understanding that the Domain Name was locked by the Registrar upon the filing of the Complaint. As such, Respondent's conduct, and not that of Ekcho, is at issue in this proceeding. If there was some actual deal in the works between Respondent and Ekcho with regard to the sale of the Domain Name to the latter, that is of no moment in this proceeding, and the conflicts arising from such deal would be a matter of a dispute between Ekcho and the Respondent (if anything, outside the scope of the UDRP).

The Panel concludes that 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 has registered and used the Domain Name in bad faith. The Panel incorporates its discussion above in the “Rights or Legitimate Interests” section.

The undisputed record indicates that, by Respondent’s own account, it had “grabbed” the Domain Name in order to advance the marketing services relationship Respondent wished to establish with Complainant. There is no indication in the record that Complainant had ever agreed to enter into such a relationship with Respondent, or had ever authorized Respondent to register a Domain Name confusingly similar to Complainant’s trademark.

Based on the evidence and plausible allegations presented, and the lack of any denial by Respondent, the Panel concludes, on a balance of probabilities, that Respondent more likely than not registered the Domain Name in order to gain leverage over Complainant in the negotiations to enter into a marketing agreement. When it became apparent that such a relationship was not coming to fruition, Respondent put up the Domain Name for sale at an enormous markup.

Such conduct clearly constitutes bad faith registration and use of the Domain Name within the meaning of Policy, notwithstanding the fact that it does not fall neatly within one of the four enumerated (though non-exclusive) factors.

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 <afinarte.com> be transferred to Complainant.

/Robert A. Badgley/
Robert A. Badgley
Sole Panelist
Date: June 12, 2022