

ADMINISTRATIVE PANEL DECISION

Ruby Life Inc. v. Domain Administrator
Case No. D2022-2268

1. The Parties

The Complainant is Ruby Life Inc., Canada, represented by SafeNames Ltd., United Kingdom.

The Respondent is Domain Administrator, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <wwwashleymadison.com> is registered with Above.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 22, 2022. On June 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 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 June 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 June 30, 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 July 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 22, 2022.

The Center appointed Kathryn Lee as the sole panelist in this matter on August 1, 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 Canadian operator of online dating websites, among which is Ashley Madison at <ashleymadison.com>, a service marketed to those that are married or in relationships. The unorthodox business model garnered media attention from its launch in 2002, and by 2021, the platform reached 75 million users with an average of around 289,000 new accounts monthly. The Complainant has trademark registrations for ASHLEY MADISON in a number of jurisdictions worldwide including in Canada (Reg. No. TMA592582, registered on October 20, 2003), the United States of America (Reg. No. 2812950, registered on February 10, 2004), the European Union (Reg. No. 007047764, registered on October 13, 2009), and Australia (Reg. No. 1250305, registered on July 8, 2008). The Complainant's domain name <ashleymadison.com> was registered on November 13, 2001.

The Respondent appears to be an individual with an address in Hong Kong, China.

The disputed domain name was registered on January 19, 2004, and resolves to a page with pay-per-click links.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark since it corresponds to the Complainant's trademark exactly, with the only addition of "www" at the beginning, and the ASHLEY MADISON trademark is recognizable within the disputed domain name. The Complainant further contends that this is a clear case of typosquatting since the omission of a period between the "www" prefix and the actual domain name is a common typographical error.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant contends that the Respondent's use of the disputed domain name to display pay-per-click links does not constitute a *bona fide* offering of goods or services since the links connect to services similar to those of the Complainant. The Complainant also states that the disputed domain name was at times linked to adult live streaming websites, *i.e.*, "www.stripchat.com" and "www.cupidcams.com", which display pornographic content, and asserts that not only does such use not constitute a *bona fide* offering of goods or services, but that this is also free riding on the fame of the ASHLEY MADISON trademark to direct traffic to another website. The Complainant also notes that the disputed domain name sometimes redirected to the Complainant's official website, which still does not constitute legitimate interest on the part of the Respondent.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant points out that the ASHLEY MADISON trademark was first used in trade as early as January 2002 and that the ASHLEY MADISON trademark was so clearly connected with the Complainant's well-known brand that the Respondent could not have chosen the disputed domain name for any reason other than to trade on that name and confuse Internet users. The Complainant also notes that the disputed domain name consists of a common typosquatting of the ASHLEY MADISON trademark that it is clear that the Respondent knew of the Complainant and its trademark. In addition, the Complainant contends that the Respondent's use of the disputed domain name to display pay-per-click links to the Complainant's competitors and redirection to websites showing pornographic content constitutes bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated with supporting evidence that it has rights to the trademark ASHLEY MADISON, which precede the registration of the disputed domain name by the Respondent. As for the disputed domain name, it consists of the ASHLEY MADISON trademark in its entirety with the term “www” at the beginning. According to the consensus view expressed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.7, a domain name is considered confusingly similar to a trademark where it “incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name.” Here, the term “www” can be disregarded from consideration as it is a common term, and the remaining portion corresponds to the Complainant’s trademark exactly, and thus, the disputed domain name is confusingly similar to the Complainant’s trademark. Not only that, the disputed domain name should be considered a case of typosquatting, since an Internet user intending to reach the Complainant’s website may easily type “wwwashleymadison.com” and miss the period after the “www” prefix. The Internet user would then be forwarded to the website connected to the disputed domain name rather than the intended website of the Complainant.

For the reasons mentioned above, the Panel finds that the first element of paragraph 4(a) of the Policy has been established.

B. Rights or Legitimate Interests

On the basis of the present record, the Panel finds that the Complainant has made the required allegations to support a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* basis has been established, the Respondent carries the burden of demonstrating its rights or legitimate interests in the disputed domain name. However, the Respondent in this case has chosen to file no Response to these assertions by the Complainant, and there is no evidence or allegation in the records that would warrant a finding in favor of the Respondent on this point.

Besides, a respondent’s use of a domain name is not considered “fair” if it falsely suggests affiliation with the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1. Here, the dominant element of the disputed domain name corresponds exactly to the Complainant’s mark, which carries a risk of implied affiliation. Further, the Respondent’s use of the disputed domain name for a parking page does not represent a *bona fide* offering of goods or services given that the disputed domain name is confusingly similar to the Complainant’s trademark and such use trades on the reputation and goodwill associated with the mark. See [WIPO Overview 3.0](#), section 2.9.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element of paragraph 4(a) of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel finds that there is sufficient evidence to find bad faith in this case.

First, the distinctive portion of the disputed domain name is identical to the Complainant’s trademark and it is highly unlikely for the Respondent to have registered the disputed domain name without having been aware of the Complainant. A simple Internet search would have shown information on the Complainant and its dating service which launched in 2002 using the trademark ASHLEY MADISON. Rather, this would appear to be a case of typosquatting in which the Respondent registered this exact series of letters in order to create a likelihood of confusion with the Complainant’s own trademark and disputed domain name for the benefit of the Respondent.

In fact, the Respondent linked the disputed domain name with a domain name parking service, which shows sponsored links, some directly related to the exact services of the Complainant. By doing so, the Respondent benefited commercially from the confusion of Internet users that visited the site by mistake as per paragraph 4(b)(iv) of the Policy.

Further, the disputed domain name was at times linked to websites showing sexually explicit content, not related to the Complainant in any way. UDRP panels have consistently held that use of a confusingly similar domain name for a website with adult content is evidence of bad faith registration and use. See *Vivendi v. Guseva Svetlana*, WIPO Case No. [D2018-2631](#) and *Christian Dior Couture v. Paul Farley*, WIPO Case No. [D2008-0008](#).

For the reasons given above, the Panel finds that the third and final element of paragraph 4(a) of the Policy has been established.

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, <www.washleymadison.com>, be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: August 16, 2022