

ADMINISTRATIVE PANEL DECISION

Baylissa Frederick v. Privacy service provided by Withheld for Privacy ehf /
Alexis Dover, White Cliffs Online Ltd
Case No. D2022-2520

1. The Parties

The Complainant is Baylissa Frederick, United Kingdom, represented by Adlex Solicitors, United Kingdom.

The Respondent is Privacy service provided by Withheld for Privacy ehf. Iceland / Alexis Dover, White Cliffs Online Ltd, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <recovery-road.org> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 11, 2022. On July 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 13, 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 18, 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 19, 2022. On the same day, July 19, 2022, the Respondent transmitted an email to the Center by way of informal communication.

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 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 9, 2022. The Respondent did not submit any further response.

The Center appointed Steven A. Maier as the sole panelist in this matter on August 22, 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 psychotherapist and author. Her work entails helping people who struggle with withdrawal reactions when trying to escape dependency on certain prescribed medications.

The Complainant registered the disputed domain name on June 2, 2010. She used it until December 2017 in connection with a website named "Recovery Road". According to a screenshot submitted by the Complainant, on March 13, 2017 the website was headed "RECOVERY ROAD – Antidepressant and Benzodiazepine Withdrawal Support". The website included a distinctive blue butterfly motif and several paragraphs of text relating to withdrawal from, and dependency on, certain prescription medicines.

In December 2017 the Complainant redirected the disputed domain name to another website operated by her at "www.baylissa.com" which was headed "Bloom in Wellness".

The Complainant's registration of the disputed domain name expired in June 2018. According to further screenshots submitted by the Complainant, the disputed domain name continued in August 2018 to resolve to a website virtually identical to that which had appeared on March 13, 2017.

As of December 3, 2018, the website continued to be headed "RECOVERY ROAD – Antidepressant and Benzodiazepine Withdrawal Support", with no material change to the appearance of the heading and website save for the omission of the blue butterfly motif. However, this version of the website included minor alterations to, or paraphrasing of, the textual content of the Complainant's website, as well as new references and links to the terms "Etizolam" and "Etizest". The link from "Etizest" redirected to a website offering the product "Etizest" for sale online.

On March 19, 2022, the website continued to have the same overall appearance and heading, but included further modifications to the text and references and links to "Etizolam" and "Modafinil". The link from "Etizolam" redirected to a website offering "Etilaam" and "Etizest" for sale online and the link from "Modafinil" to an online pharmacy. The website also referred to:
"... the off chance that you might want additional help, as a private withdrawal bolster counsel with the originator of the Recovery Road Project."

At the date of this Decision, the disputed domain name resolved to an "Account Suspended" webpage.

5. Parties' Contentions

A. Complainant

The Complainant states that she has promoted her services under the name "Recovery Road" since 2010. She exhibits a copy of a consultancy agreement for such services. She states that after her own redirection of the disputed domain name to "Bloom in Wellness" in December 2017, she retained the name "Recovery Road" as an important secondary brand in which she had built up an extensive reputation. The Complainant points, in particular, to numerous third-party websites relating to drug dependency and withdrawal, all of which contained links to her website and continued to do so until June 2022. The Complainant states that she was contacted by one such website operator stating that they had removed the link to her website since it now seemed to be under the control of another party, whereupon she contacted some 25 other websites or publications asking them also to remove their links.

The Complainant states that she failed to renew the disputed domain name in June 2018 owing to an administrative oversight. She provides evidence that the website hosting provider linked to the disputed domain name was changed between July 4 and July 13, 2018 and submits that the Respondent acquired the disputed domain name at or around this time.

The Complainant submits that she first complained about the misuse of the disputed domain name in August 2018, when the then hosting provider confirmed it had terminated the account. She states that the Respondent then switched to a new host, initially uploaded an exact copy of her website, and then proceeded progressively to make alterations to the website content and add the links referred to above.

The Complainant submits that the disputed domain name is identical to the name "Recovery Road", in which she claims common law rights by virtue of the substantial reputation and goodwill attaching to that name. The Complainant submits that residual goodwill in a name that was formerly used has been recognized under the UDRP as continuing to give rise to relevant rights: see *e.g.*, *California Stormwater Quality Association v. Vilma Morales*, WIPO Case No. [D2004-0617](#).

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. She states that she has never authorized the Respondent to use the "Recovery Road" name, that the Respondent has not commonly been known by the disputed domain name, and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name. The Complainant submits that the Respondent has instead sought to confuse Internet users by impersonating the Complainant for financial gain.

The Complainant submits that the disputed domain name was registered and has been used in bad faith. She states that it is obvious from the Respondent's impersonation of the Complainant that it was aware of the Complainant and set out to create a likelihood of confusion on the part of Internet users. The Complainant states that the Respondent initially uploaded an exact copy of her website and then began insidiously tweaking the website text so that, while the website appeared to be devoted to helping people recover from dependence on potentially addictive medications, its main purpose was then to drive vulnerable users to websites offering the very same medications from which they were trying to escape.

The Complainant also provides evidence that the Respondent is the registrant of other domain names containing the names of medicines.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent's email to the Center dated July 19, 2022 contained a statement of the Respondent's position concerning the disputed domain name.

The Respondent states that it is a domainer who has owned many domains over the years and always leaves the nameservers untouched and the same as per the previous owner. It states that some of the domain names it acquires come with hosting still active from the previous owners and some without.

The Respondent states that it acquired the disputed domain name on November 15, 2021.

The Respondent states that its only interest was in the disputed domain name itself and not in any website content or external links. It states that whatever was on the website was done by the previous owner and the Respondent was not aware of any infringement.

The Respondent states that several of its older domain names using cPanel (hosting software) have been hacked and that this appears to be the case with the disputed domain name. The Respondent suggests that an old cPanel or FTP password has possibly been used for the purpose of "classic SEO hacking links to

pharmacy sites.” The Respondent states that such hacking is common unless relevant passwords are kept up to date.

The Respondent contends that the Complainant has already obtained a remedy to her Complaint as the website content to which she objected has now been suspended by the hosting provider. The Respondent submits that there is currently no content linked to the disputed domain name and that, unless the Complainant can show how the disputed domain name “alone is owned under trademark”, then the Respondent is entitled to retain it.

The Respondent did not file any formal Response in accordance with the Policy. The Panel therefore directs that its informal communication above be treated as its Response in this proceeding.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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

The Complainant has no trademark registration for the name “Recovery Road”, but claims common law rights in that name based on her use of the name in connection with her consultancy business since 2010. While the name “Recovery Road” comprises two dictionary words, the Panel finds that the combination of these terms is distinctive in nature and, moreover, that the name has become distinctive of the Complainant and her services in the relevant field. This matter is amply evidenced by the fact that at least 25 other websites or publications in the field of drug withdrawal and dependency advice linked to the Complainant’s website which she operated under the disputed domain name and continued so to link until June 2022.

The Panel therefore finds that the Complainant has common law rights in the nature of unregistered trademark rights in the name “Recovery Road”.

The disputed domain name is identical to the Complainant’s name “Recovery Road”, ignoring the hyphen and the generic Top-Level-Domain (“gTLD”) “.org” which are typically to be disregarded for the purpose of comparison. The Panel therefore finds that the disputed domain name is identical or confusingly similar to a name, amounting to an unregistered trademark, in which the Complainant has rights.

B. Rights or Legitimate Interests

The Panel finds that the Complainant’s submissions referred to above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. In reply, the Respondent states that it acquired the disputed domain name in its capacity as a domainer and “my only interest was in owning the domain itself.” The Respondent also implies that it is entitled to retain the disputed domain name unless the Complainant can demonstrate exclusive trademark rights in the name “Recovery Road”.

In the view of the Panel, the Respondent’s submissions do not disclose any basis for claiming rights or legitimate interests in respect of the disputed domain name. The Respondent provides no information about its reasons for acquiring the disputed domain name specifically, or its intentions with regard to the disputed

domain name. In particular, it does not contend that it has made any preparations to use the disputed domain name in connection with any *bona fide* offering of goods or services or in connection with any legitimate noncommercial fair use purpose. The mere registration of a domain name does not of itself confer rights or legitimate interests upon the registrant, even if that domain name comprises “dictionary” words, where there is evidence of use to trade off third-party trademark rights (see e.g., section 2.10.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). For the reasons set out below, the Panel finds that the disputed domain name has clearly been used to trade off the Complainant’s rights and the Panel finds, therefore, that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

Based on the evidence submitted by the Complainant, which the Respondent does not materially dispute, it is clear that a website was configured upon the disputed domain name, after the Complainant lost control of it, which was substantially identical to the Complainant’s own former website. It is also clear that progressive changes were made to that website over a period of time to maintain the appearance of an advisory site but also to include references and links to certain prescription medications, with the intention no doubt of generating click-through or other revenue. To the extent that these were the very medications that the Complainant’s website was intended to assist vulnerable individuals to escape, these activities represent bad faith of the most egregious kind.

While the Complainant contends that the Respondent acquired the disputed domain name in about July 2018, the Respondent states that it did not do so until November 2021. In the circumstances of the case, the Panel finds the Complainant’s submission to be more likely. First, it would have been a simple matter for the Respondent to provide evidence of the date of its acquisition of the disputed domain name, which it has chosen not to do. Secondly, the development of the relevant website between August 2018 and its recent suspension suggests a deliberate and consistent course of conduct on the part of one controlling entity.

Furthermore, even if the Respondent only acquired the disputed domain name in November 2021, it is clear that the relevant website continued to impersonate the Complainant, for purposes including promoting online sales of various medications, until June or July 2022 (when the Complaint was filed). In this regard, the Panel sees no merit in the Respondent’s submissions that it was not responsible for the content of the website, that it was not aware of the misleading nature of the website content and that the website in question had most likely been hacked by an unknown third party.

If, as the Respondent submits, it acquired the disputed domain name with the Complainant’s content still present, then it is clear to the Panel that the Respondent knew, or ought to have known, about the Complainant’s use of the “Recovery Road” name and the disputed domain name. As to the use of the disputed domain name following the Respondent’s acquisition, the Respondent cannot disclaim responsibility for the content of the relevant website by asserting that it has no interest in the content attaching to domain names which it acquires. It is responsible for that content as the owner of the disputed domain name, and even in cases where domainers make bulk purchases of domain names, panels under the UDRP have held that they have an affirmative obligation to avoid trademark abusive domain names (see section 3.2.3 of [WIPO Overview 3.0](#)). Similarly, even where a website may contain automatically generated content which the operator does not directly control, panels have held that the operator cannot disclaim responsibility for that content (although employing positive efforts to avoid infringement – of which there is no suggestion here; rather the opposite – may mitigate the relevant behaviour) (see section 3.5 of [WIPO Overview 3.0](#)).

The Panel also notes the Complainant’s evidence that the Respondent has an interest in other domain names which include the names of medicines, which appears highly coincidental if the Respondent had no interest in the content of the Complainant’s website as it claims.

The Panel finds in the circumstances that the Respondent was responsible for the relevant website content at all material times upon and following its acquisition of the disputed domain name and that, by using the

disputed domain name, the 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 or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel therefore finds that the disputed domain name has been registered and is being used 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, <recovery-road.org>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: September 5, 2022