

ADMINISTRATIVE PANEL DECISION

Majors Law Group, P.C v. Sergio Fitch
Case No. D2022-3003

1. The Parties

The Complainant is Majors Law Group, P.C, United States of America (“United States”), self-represented.

The Respondent is Sergio Fitch, Mexico.

2. The Domain Name and Registrar

The disputed domain name <majorslawgroups.com> is registered with OVH (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 15, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the following day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 23, 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 in English on the same day.

On August 23, 2022, the Center also sent a communication to the Parties in English and Spanish regarding the language of the proceeding. On the same day, the Complainant requested that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 August 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 26, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on September 30, 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 law firm established in 2019. It is a debt relief agency that helps people file for relief under the United States Bankruptcy Code. It has offices in Arizona and Washington. It operates a website in connection with the domain name <majorslawgroup.com> where it provides information about itself and its services.

The Respondent is an individual.

The disputed domain name was registered on June 8, 2021. It resolves to a website in English that publishes criticism of the Complainant and its attorneys.

5. Parties' Contentions

A. Complainant

The Complainant was founded as a law firm on June 1, 2019, and began using the mark "Majors Law Group, P.C." in connection with associated services, including promoting the law firm. The Majors Law Group, P.C. has represented over 2000 clients in Arizona since 2019. The Complainant has used its name and domain name in other jurisdictions as well, such as Washington state where it set up a second office location in 2021. The Complainant uses the domain name <majorslawgroup.com>, registered on March 22, 2016, and it has used that domain name extensively since June 1, 2019, to identify its law firm, attorneys, and website. Through the Complainant's continuous and extensive use of the mark in advertising and commerce, the Majors Law Group mark has substantial goodwill and is known locally, in at least Arizona and Washington, to represent the Complainant's law firm. The sole purpose of the disputed domain name is to confuse and deter current and potential clients of the Complainant. The disputed domain name is identical or effectively identical to the Complainant's Majors Law Group mark.

The Respondent has no rights or legitimate interests in the disputed domain name. Although the Respondent has a right to establish a website for the purpose of legitimate criticism and commentary, he may not do so via a domain name that is identical or confusingly similar to the Complainant's mark and domain name. The Respondent is not using the disputed domain name to offer any goods or services but is merely using it to criticize the Complainant. The Respondent fully incorporated the Complainant's mark and domain name into the disputed domain name for the sole purpose of diverting Internet users from the Complainant's website to the Respondent's defamatory site. Such activities do not constitute fair use or non-commercial use.

The disputed domain name was registered and is being used in bad faith. The purpose of the Respondent's registration and use of the disputed domain name is unquestionably to disrupt the Complainant's business. This is clear from simply reading the website content. The Respondent could have chosen any number of domain names which indicate to the viewer the true nature of the website. Instead, he chose to directly copy the Complainant's trademark and domain name in order to dress itself up in the Complainant's image to lure Internet users to its defamatory site.

The Complainant requests the Panel either transfer the disputed domain name or cancel it.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural Issues

A. Identity of the Respondent

The name of the registrant of the disputed domain name is masked in the Registrar's public Whois database by a privacy service. The original Complaint designated as respondent a third party who is mentioned in the text on the website associated with the disputed domain name. That third party contacted the Center to advise that he had no interest or involvement in the disputed domain name or associated website; he requested that his name be removed as the respondent in this matter. After the Registrar disclosed the name of the underlying registrant, Sergio Fitch, the amended Complaint substituted him as respondent. The Panel considers the underlying registrant to be the appropriate respondent against which this proceeding should be conducted and refers to him in this Decision as the "Respondent", whereas the third party's name has been removed from the case details and omitted from this Decision.

B. Pending Court Proceeding

According to the Complaint and the amended Complaint, an Application for Temporary Restraining Order and Petition for Order to Show Cause regarding an Application and Preliminary Injunction has been filed in Maricopa County Superior Court, Arizona, United States, Case number CV2021-003687. The Complainant does not identify the parties, the claims or the relief sought in that court proceeding, nor does it provide a copy of the Application and Petition.

Paragraph 18(a) of the Rules provides that, in the event of legal proceedings initiated prior to or during an administrative proceeding in respect of a disputed domain name, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding or to proceed to a decision. In the present case, the Panel gathers that the issues in the court proceeding in Arizona overlap with those in the present UDRP proceeding. However, given that the court proceeding was initiated prior to this administrative proceeding when the Complainant was unaware of the Respondent's identity, it is unlikely that the court proceeding was initiated against the same party. In any case, neither Party requests that the Panel suspend or terminate this administrative proceeding, and a suspension pending an outcome of the court proceeding would have the potential for indeterminate delay, which is not envisaged under the Policy. Accordingly, the Panel will proceed to a consideration of the merits of the Complaint. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.14.

C. Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Spanish.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the website associated with the disputed domain name is entirely in English, the Respondent is actually based in California, United States, while his social media accounts and voicemail message are in English and one of his social media accounts indicates that he has worked as an English/Spanish translator.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the Complaint and amended Complaint were filed in English. The website to which the disputed domain name resolved is entirely in English, from which it is reasonable to infer that the Respondent is able to communicate in that language. Further, despite the Center having sent an email regarding the language of the proceeding and a notice of the Complaint in both Spanish and English, the Respondent did not comment on the issue of language or express any interest in participating otherwise in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Spanish would create an undue burden and delay whereas accepting it in English does not create unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Spanish, but none was filed.

6.2. Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed 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 in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The burden of proof of each element is on the Complainant. Failure to satisfy any of the above elements will lead to denial of the Complaint.

The Complaint is based on a claim of unregistered or common law rights in the trademark "Majors Law Group" (or "Majors Law Group P.C."). It claims that this mark is known locally, in at least Arizona and Washington state, in the United States, to represent the Complainant's law firm.

The Panel recalls that in order to establish common law trademark rights for the purposes of the UDRP, the Complainant must show that its claimed mark has become a distinctive identifier that consumers associate with the Complainant's goods or services. Relevant evidence demonstrating such acquired distinctiveness includes a range of factors such as (i) 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 recognition; and (v) consumer surveys. Specific evidence supporting assertions of acquired distinctiveness should be included in the Complaint; conclusory allegations of common law rights, even if undisputed in the case, would not normally suffice to show secondary meaning. See [WIPO Overview 3.0](#), section 1.3.

In the present case, the Complainant asserts that it has used its mark for three years to refer to itself and its services, including in its domain name and on its website. It claims to have represented over 2000 clients in Arizona since 2019; it has also had an office in Washington state since 2021. It asserts that it has made continuous and extensive use of the claimed mark in advertising and commerce.

The Panel observes that the amended Complaint presents no evidence in support of the claimed common law rights or any of the above assertions. In fact, the amended Complainant presents no evidence besides a copy of the Registration Agreement for the disputed domain name.

Bearing in mind the Panel's general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules, the Panel has visited the Complainant's website and the website associated with the disputed domain name as it considers this to be useful in assessing the merits of the case and reaching a decision. See [WIPO Overview 3.0](#), section 4.8. The Panel observes that both Parties on their respective websites refer to the Complainant as "Majors Law Group" but the content of these websites is not sufficient for the Panel to find that the claimed mark has acquired distinctiveness. The Complainant's website displays a logo with the words "Arizona's Premier Law Firm" and five stars, plus two badges with laurel wreaths, but these are not awards or ratings that indicate public or industry recognition.

Further, the Respondent's website specifically challenges an assertion by two of the Complainant's attorneys to have represented thousands of clients when they had allegedly been licensed for only two years. The Respondent's website also challenges the authenticity of the Complainant's client reviews. Yet the Complainant has merely reiterated the challenged assertion regarding the number of its clients, although now its firm has been established three years. The Panel is mindful that the fact of the Respondent's critical website would seem to acknowledge a source-identifying capacity in the Complainant's claimed mark, but considers the competing claims as to the extent of its recognition cast sufficient doubt over whether rights have accrued for purposes of the Policy.

Based on this record, the Panel is unable to conclude that the Complainant enjoys common law rights in its claimed mark.

The Complainant also notes that the disputed domain name is identical or confusingly similar to its own domain name. However, a domain name, in itself, cannot ground a claim under the Policy where it has not become a distinctive source identifier for a complainant. The first element of paragraph 4(a) of the Policy requires a demonstration of identity or confusing similarity to a trademark or service mark.

Therefore, the Complainant has failed to satisfy the first element of paragraph 4(a) of the Policy and lacks standing to bring this dispute. Accordingly, it is unnecessary for the Panel to consider the other elements of paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: October 7, 2022