

## **ADMINISTRATIVE PANEL DECISION**

Mav Media, LLC v. I S, ICS Inc.

Case No. D2022-3802

### **1. The Parties**

The Complainant is Mav Media, LLC, United States of America, represented by Silverstein Legal, United States of America.

The Respondent is I S, ICS Inc., Cayman Islands, United Kingdom.

### **2. The Domain Name and Registrar**

The disputed domain name <dirtyroutlette.com> 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 October 11, 2022. On October 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 17, 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 October 25, 2022.

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 October 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 16, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on November 21, 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 owns and operates the website located at the domain <dirtyroulette.com> and has used its domain for several years to provide a video chat platform that allows users to chat with each other on the World Wide Web by video.

Complainant's DIRTYROULETTE trademark is registered in the United States of America under US Registration No. 5,109,884 filed on June 30, 2016, and registered on December 27, 2016 for various services in class 38. The Complainant also states that it has established extensive common law rights through use of the DIRTYROULETTE mark throughout the world since 2010.

The disputed domain name was registered on October 25, 2017, and resolves to a landing page that contains a security warning that *inter alia* states: "The site ahead contains harmful programs."

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that the disputed domain name is confusingly similar to the trademark in which it has rights. The disputed domain name incorporates an obvious misspelling of its DIRTYROULETTE mark, and ".com" is as a standard registration requirement designation that does not sufficiently distinguish the disputed domain name from the Complainant's mark.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent, whether express or implied, to use the DIRTYROULETTE mark in the disputed domain name or in any other manner. Furthermore, the Respondent is not commonly known by the mark and does not hold any trademarks for the disputed domain name.

The Complainant finally submits that the disputed domain name was registered and is being used in bad faith. The disputed domain name was thus registered long after the Complainant had acquired common law rights to the mark and well after the mark was registered, and case law under the UDRP has established that the registration of a domain name that is confusingly similar to a widely known trademark, as is the case here, creates a presumption of bad faith. The fact that the disputed domain name redirects to a website that contains harmful programs clearly constitutes bad faith use under the UDRP.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

#### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to the Complainant's registered trademark DIRTYROULETTE since it contains an obvious misspelling of this mark. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The generic Top-level Domain ("gTLD") ".com" is a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the conditions in paragraph 4(a)(i) of the Policy are fulfilled in relation to the disputed domain name.

#### **B. Rights or Legitimate Interests**

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark and given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent has not rebutted the Complainant's *prima facie* case, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings. Furthermore, previous UDRP panels have categorically held that the use of a disputed domain name for illegal activity such as malware distribution, can never confer rights or legitimate interests on a respondent. See section 2.13 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the conditions in paragraph 4(a)(ii) of the Policy are fulfilled in relation to all the disputed domain names.

#### **C. Registered and Used in Bad Faith**

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of the domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder 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 the holder has engaged in a pattern of such conduct; or

(iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name was registered and is being used in bad faith.

Given the circumstances of the case, including the distinctive nature of the Complainant's trademark DIRTYROULETTE, it is inconceivable to the Panel that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name he chose could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name has not and does not resolve to an accessible website, since the most currently used browsers block the access to the website for security reasons. The Panel can therefore not immediately establish if and then how the disputed domain name is being used. This does, however, not prevent a finding of bad faith use, since also use of a domain name for other purposes than trademark-abusive use such as "sending email, phishing, identity theft, or malware distribution" may constitute bad faith use other as mentioned in section 3.4 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the conditions in paragraph 4(a)(iii) of the Policy is fulfilled in relation to the disputed domain name.

## **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 <dirtyroulette.com> be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: December 5, 2022