

## **ADMINISTRATIVE PANEL DECISION**

Jonathan Bartlett Allen v. Konstant Yu

Case No. D2022-4809

### **1. The Parties**

Complainant is Jonathan Bartlett Allen, United States of America (“United States”), represented by Blake Legal Advisors, United States.

Respondent is Konstant Yu, United States.

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

The disputed domain name <mrballen.com> is registered with Google LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 14, 2022. On December 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 16, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to Complainant on December 20, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 24, 2022. On January 10, 2023, Complainant filed another amended Complaint compliant with the word limit following the Center’s email on January 4, 2023.

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 January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. Respondent did not submit any response. Accordingly, the Center notified the Parties of Respondent’s default on January 31, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on February 13, 2023. 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**

Complainant operates a YouTube channel (@MrBallen) on which he records storytelling videos under the name "Mr Ballen". In addition, Complainant is the proprietor of United States Trademark Registration No. 6642791 for MRBALLEN (word mark), registered on February 15, 2022 for services in class 41, claiming a date of first use of March 22, 2015.

The disputed domain name was registered on April 26, 2020. At the time of this Decision, it does not resolve to an active website. The record reflects that it previously redirected users to Complainant's YouTube channel.

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

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

Complainant's voluminous arguments may be summarized as follows:

Under the first element, Complainant states that he is a professional storyteller and creator of the MRBALLEN brand/character. Complainant has posted MRBALLEN YouTube videos since January 2020. These videos have been viewed 1.3 billion times, and Complainant's YouTube channel has over 7 million subscribers. The MRBALLEN name was used on various social media channels as early as 2015, was promoted on the Internet for mystery stories in mid-2019, and on Internet-based social media beginning in January 2020, predating the registration of the disputed domain name. The disputed domain name is identical to Complainant's mark. Complainant states that there is evidence that the disputed domain name was transferred to Respondent on April 26, 2022 and contends that this, rather than the original registration date, should be taken into consideration when comparing the disputed domain name to Complainant's mark.

Under the second element, Complainant states that Respondent is not affiliated with Complainant, nor has Complainant authorized Respondent to use the MRBALLEN mark or name. The disputed domain name has been used to redirect to Complainant's YouTube channel.

Under the third element, Complainant states that Respondent has deliberately targeted Complainant by registering the disputed domain name and using it to redirect to Complainant's YouTube channel, most likely to appropriate click-through revenue associated with Complainant's YouTube pay-per-click ("PPC") links. Further, Respondent appears to have used the disputed domain name to generate spam emails.

Complainant requests transfer of the disputed domain name.

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

Respondent did not reply to Complainant's contentions.

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

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed 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 disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

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

Complainant has provided evidence establishing that it has trademark rights in the MRBALLEN mark through registration in the United States. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1. The Panel notes that the date of registration is not considered relevant to the first element test, but may bear on the substantive determination under the second and third elements. See [WIPO Overview 3.0](#), section 1.1.2.

In comparing Complainant’s marks with the disputed domain name, the Panel finds that they are identical. It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. [WIPO Overview 3.0](#), section 1.7.

It is the well-established view of UDRP panels that the generic Top-Level Domain “.com” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1, and cases cited thereunder).

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

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

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, respondent’s use of, or demonstrable preparations to use the domain names or a name corresponding to the domain names in connection with a *bona fide* offering of goods or services; or
- (ii) respondent has been commonly known by the domain names, even if it has acquired no trademark or service mark rights; or
- (iii) respondent is making a legitimate noncommercial or fair use of the domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel finds that there is no evidence that Respondent is commonly known by the disputed domain name or is using the MRBALLEN mark with the permission of Complainant. The nature of the disputed domain name cannot constitute fair use since it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain names.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

Respondent, in failing to file a response, has not submitted any evidence or arguments demonstrating such rights or legitimate interests, nor has it rebutted any of Complainant's contentions. The circumstances of the case prevent the inference of rights nor legitimate interests on the part of Respondent. There is no evidence that Respondent is known by the disputed domain name, which redirects to Complainant's YouTube channel and appears to have been used to generate spam emails. It is established UDRP practice that such conduct does not establish rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.9, and cases cited thereunder.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

### **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 a disputed domain name in bad faith:

- (i) circumstances indicating that Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed 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 the documented out-of-pocket costs directly related to the domain name; or
- (ii) Respondent has registered the disputed 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) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed 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.

As an initial matter, the Panel finds that the evidence that the domain name was transferred to Respondent in 2022, post-dating the registration of the MCBALLEN mark, is inconclusive. However, the Panel finds that Complainant has provided sufficient evidence that the MRBALLEN mark was used in commerce on various social media channels including his YouTube channel which had accumulated millions of subscribers and hundreds of millions of views for its content by at least March 2020, and had thereby acquired sufficient distinctiveness as an identifier of source by the time of the registration of the disputed domain name in April 2020. Therefore, the Panel finds that the disputed domain name was registered in recognition and anticipation of trademark rights and a finding of bad-faith registration of the disputed domain name is therefore supported. See [WIPO Overview 3.0](#), section 3.8.2.

The disputed domain name reflects Complainant's MRBALLEN mark in its entirety, and it was used to redirect to Complainant's YouTube channel. On this evidence, the Panel finds that Respondent was aware of, and targeted, Complainant when registering the disputed domain name.

It is the consensus view of UDRP panels that redirecting users to Complainant's own website would be a type of conduct demonstrating a Respondent's use of a disputed domain name intentionally to attract, for

commercial gain, Internet users to a website by creating a likelihood of confusion with Complainant's mark. In this case, the Panel finds that Respondent has demonstrated bad faith by using the disputed domain name to redirect Internet users Complainant's own YouTube channel. The record also contains evidence that the disputed domain name was used to generate spam emails. Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name, nor does the Panel find that any such use is plausible. See [WIPO Overview 3.0](#), section 3.1.4, and cases cited thereunder.

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) of the Policy.

## **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 <mrballen.com> be transferred to Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: February 24, 2023