

ADMINISTRATIVE PANEL DECISION

Patrick Schur v. Devin Day

Case No. D2023-4104

1. The Parties

The Complainant is Patrick Schur, Switzerland, represented by Gearhart Law LLC, United States of America (“U.S.”).

The Respondent is Devin Day, U.S.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2023. On October 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 3, 2023, 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 October 8, 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 the Respondent of the Complaint, and the proceedings commenced on October 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 3, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on November 8, 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

The Complainant owns a figurative U.S. trade mark No. 6,176,011 for I-BUBBLE, filed on March 27, 2019, registered on October 13, 2020, in classes 9 and 42. The mark bears a first use date of January 7, 2020.

The disputed domain name was registered on May 20, 2001.

The disputed domain name does not resolve to a website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

Notably, the Complainant asserts that the public have come to recognise the Complainant's mark as a distinctive identifier; that the mark has become famous; that the disputed domain name has not been used as an active website since at least 2011; and that the "Updated On" status date of April 20, 2023, shown in the Whois data, is evidence of a third-party transfer of the disputed domain name to the Respondent that postdates the accrual of the Complainant's trade mark rights.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognisable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

It is unnecessary to consider this element in light of the Panel's conclusion under the third element below.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

However, except for limited circumstances involving registration of a domain name to capitalise on nascent trade mark rights, panels will not normally find bad faith on the part of the respondent where a respondent registers a domain name before the complainant's trade mark rights accrue. Section 3.8.1 of [WIPO Overview 3.0](#).

Here, the disputed domain name was first registered on May 20, 2001, whereas the Complainant's trade mark rights arose no earlier than March 27, 2019, the date of the registered trade mark application. The Complainant has supplied no evidence of actual use of the mark, whether before or after that date.

The Complainant relies on the "Updated On" date of April 20, 2023, shown on the Whois database, as evidence that the Respondent acquired the disputed domain name after accrual of the Complainant's trade mark rights. The Complainant maintains that it is reasonable to accept such an assertion in the absence of countervailing evidence, the majority of which would be in the hands of the Respondent.

However, the Complainant bears the responsibility of establishing the three elements under the Policy. Section 4.2 of [WIPO Overview 3.0](#). In the circumstances, the Complainant must therefore provide evidence to demonstrate that, as claimed in the Complaint, the Respondent acquired the disputed domain name after the Complainant established its trade mark rights in I-BUBBLE and, indeed, that the Respondent targeted the Complainant when it acquired the disputed domain name.

In the Panel's view, on its own, a change in the "Updated On" date on a Whois record is of little probative value. While in theory it might indicate a registrant transfer, it could also be triggered by other kinds of changes to the Whois data.

The Panel notes that the Complainant has failed to provide:

- any registrant entries from historic Whois records for the disputed domain name that might have pointed to a registrant transfer;
- any evidence that the Complainant actually traded under the mark I-BUBBLE, let alone that this mark had become "famous"; or
- any evidence that the Respondent at any point targeted the Complainant.

The Panel further notes that the composition of the disputed domain name is not inherently indicative of targeting in that it consists of the dictionary term "bubble" plus the prefix "i", which has an obvious Internet connotation.

Based on the available record, the Panel finds the third element of the Policy has not been established.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint

was brought in bad faith and constitutes an abuse of the administrative proceeding”. Reverse Domain Name Hijacking (“RDNH”) is defined under the Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

The reasons articulated by panels for finding RDNH, are set out in section 4.16 of [WIPO Overview 3.0](#). The Complainant has made no real attempt to support its assertion of bad faith. As discussed above, the Complainant has not provided any convincing evidence to the effect that its trade mark rights predated the Respondent’s acquisition of the disputed domain name, let alone that the Respondent was likely to have been aware of the Complainant at any material time. For example, the Complainant has not produced evidence supporting its claim that its mark I-BUBBLE had become famous, or indeed that the Complainant traded under that name.

Furthermore, the Panel notes that the facts here are similar to those of another decision where the Complainant, represented by the same representative as here. See *Patrick Schur v. Stephen Brewer*, WIPO Case No. [D2023-4098](#). In that case, amongst other things, the Complainant failed to provide any evidence of use of the relevant trade mark, and the Complainant again unsuccessfully relied on the “Updated On” status date in the Whois record as evidencing the respondent’s alleged acquisition of the domain name after accrual of his trade mark rights.

Accordingly, based on the available record, the Panel finds that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: November 24, 2024