

ADMINISTRATIVE PANEL DECISION

Allan Myers, Inc. v. jamie dornan
Case No. D2024-3691

1. The Parties

The Complainant is Allan Myers, Inc., United States of America (“United States”), represented by Cozen O'Connor, United States.

The Respondent is jamie dornan, United States.

2. The Domain Name and Registrar

The disputed domain name <allanmyer.com> (the “Disputed Domain Name”) 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 11, 2024. On September 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 12, 2024, 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 (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 16, 2024, 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 September 17, 2024.

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 September 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 14, 2024.

The Center appointed Lynda M. Braun as the sole panelist in this matter on October 18, 2024. 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 construction services company incorporated in Delaware with headquarters in Worcester, Pennsylvania. Since its founding in 1939, the Complainant has provided numerous construction services, including, but not limited to, construction consultation, construction management, construction planning, consultation services for the construction of water and wastewater plants, construction of water and wastewater plants, laying and construction of pipelines, road and highway construction, road and highway paving services, and bridge construction services.

The Complainant owns the following incontestable federal trademark through the United States Patent and Trademark Office ("USPTO"): ALLAN MYERS, United States Trademark Registration No. 4,828,189, registered on October 6, 2015, in international class 37. The Complainant also claims that it has common law trademark rights in the ALLAN MYERS trademark through the use, advertisement, and promotion of such mark in connection with the Complainant's construction services. The foregoing trademark rights will hereinafter be collectively referred to as the "ALLAN MYERS Mark".

The Complainant owns the domain name <allanmyers.com> which resolves to the Complainant's official website at "www.allanmyers.com", and which includes information about the Complainant and the services it provides.

The Disputed Domain Name was registered on September 4, 2024, and resolves to a cgi-bin landing page. The Complainant alleges that the Respondent connected the Disputed Domain Name to fraudulent emails incorporating the Disputed Domain Name (e.g., "[...].@allanmyer.com"), to send to the Complainant's customers and vendors, so that they would make payments owed to Complainant to the Respondent's bank account. The Complainant, however, has not submitted any evidence of such a fraudulent scheme by the Respondent.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name. Notably, the Complainant contends that:

- the Disputed Domain Name is confusingly similar to the Complainant's trademark because the Disputed Domain Name contains the ALLAN MYERS Mark in its entirety, save for the omission of the letter "s" in the Disputed Domain Name, followed by the generic Top-Level Domain ("gTLD") ".com", and thus does not prevent a finding of confusing similarity;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, among other things, the Complainant has not made demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services; and the Respondent was not commonly known by the ALLAN MYERS Mark or any similar name; and
- the Disputed Domain Name was registered and used in bad faith because, among other things, the Respondent had actual knowledge of the Complainant and the ALLAN MYERS Mark and configured the Disputed Domain Name into emails sent to the Complainant's vendors and customers with requests for payment to a bank account purportedly owned by the Respondent.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove the following three elements in order to prevail in this proceeding:

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that the Disputed Domain Name is confusingly similar to the ALLAN MYERS Mark.

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 trademark and the Disputed Domain Name. See [WIPO Overview 3.0](#), section 1.7.

It is uncontroverted that the Complainant has established rights in the ALLAN MYERS Mark based on its years of use as well as its registered trademark for the ALLAN MYERS Mark in the United States. The consensus view is that "registration of a mark is prima facie evidence of validity". The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the ALLAN MYERS Mark.

The Disputed Domain Name consists of the entirety of the Complainant's ALLAN MYERS Mark, albeit without the letter "s", followed by the generic Top-Level Domain ("gTLD") ".com". Here, the ALLAN MYERS Mark is recognizable in the Disputed Domain Name, which supports a finding of confusing similarity. Further, the addition of a gTLD such as ".com" in a domain name is a technical requirement. As such, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's ALLAN MYERS Mark.

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

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which a respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the difficult

task of “proving a negative,” requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Complainant’s prima facie case includes the fact that the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its ALLAN MYERS Mark, that the Complainant does not have any type of business relationship with the Respondent, that there is no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, and that there is no evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c).

Further, the Complainant claimed that the Respondent used the Disputed Domain Name to configure emails to purportedly perpetuate a phishing scheme to write to the Complainant’s vendors and customers to request payments to the Respondent’s bank account. In principle, this does not confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”). See also *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the Respondent had no rights or legitimate interests in the Disputed Domain Name, holding that “such phishing scam cannot be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”). However, the Complainant did not provide evidence to support its claim. For this reason, the Panel cannot take this claim into account when assessing whether the Respondent has demonstrated rights or legitimate interests in the Disputed Domain Name. Notwithstanding the omission of this claim and considering the composition of the Disputed Domain Name, the Panel finds that the Complainant has provided sufficient and undisputed evidence that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name 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. The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent’s bad faith registration and use of the Disputed Domain Name, 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.

The Panel also finds that the Respondent had actual knowledge of the Complainant and its rights in the ALLAN MYERS Mark when registering the Disputed Domain Name, emblematic of bad faith registration and use. It strains credulity to believe that the Respondent did not know of the Complainant or its ALLAN MYERS Mark. Thus, the Panel finds that in the present case, the Respondent had the Complainant’s

ALLAN MYERS Mark in mind when registering and using the Disputed Domain Name.

Further, the Panel concludes that the Respondent's registration of the Disputed Domain Name was an attempt to disrupt the Complainant's business for commercial gain. See *Newegg Inc. v. Nicole Alex and Alexander Ethan*, WIPO Case No. [D2019-2740](#) (registration of disputed domain names was likely to have been made in an attempt to receive commercial gain from their exploitation). The Panel additionally finds that the Respondent's use of the Disputed Domain Name was also highly likely to confuse the Complainant's customers and vendors into incorrectly believing that the Respondent was authorized by or affiliated with the Complainant.

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

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 <allanmyer.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: October 28, 2024