

ADMINISTRATIVE PANEL DECISION

MATERNITY IP HOLDINGS LP v. Michael Fournier

Case No. DAI2024-0021

1. The Parties

The Complainant is MATERNITY IP HOLDINGS LP, United States of America (“United States”), represented by ESCA Legal, United States.

The Respondent is Michael Fournier, France.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 5, 2024. On March 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 5, 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 (Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 6, 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 amendment to the Complaint on March 6, 2024.

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 March 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 2, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on April 9, 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 and its predecessors have supplied maternity apparel under the marks MOTHERHOOD and MOTHERHOOD MATERNITY since around 1952.

The Complainant relies on a number of registered trade marks for MOTHERHOOD including United States Trade Mark No. 1055611, registered on January 4, 1977, in class 25 and United Kingdom Trade Mark No. UK00003695711, registered on March 31, 2023, in classes 20, 24, and 28; as well as the International trade mark registration no. 1152427 for MOTHERHOOD MATERNITY registered on January 24, 2013, in class 25.

The Complainant operates a website at “www.motherhood.com”.

The disputed domain name was registered in 2021 as shown in the public Whois record.

As of April 3, 2024, the disputed domain name resolved to a website offering the disputed domain name for sale including a statement that the seller would only consider offers of USD 30,000 or over.

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:

- it is the largest global maternity company with a “consumer base” of over 20 million;
- the Respondent is not making a bona fide of goods or services because the Respondent is diverting the Complainant’s customers and offering for sale a domain name that is closely associated with the Complainant’s online services at its website;
- the disputed domain name is not being used or demonstrably intended to be used in connection with any dictionary meaning rather than to trade off third party rights;
- the combination of the “.ai” country code Top Level Domain (“TLD”), which can be construed as “artificial intelligence” by Internet users, cannot be fair use as it impersonates or suggests sponsorship of endorsement by the Complainant, especially given that the disputed domain name resolves to a website offering the disputed domain name for sale;
- the Respondent acquired the disputed domain name for resale to the Complainant or a competitor because the disputed domain name merely resolves to a webpage offering the disputed domain name for sale, and also links to a domain trading website, further evidencing cybersquatting use of the disputed domain name;
- more likely than not, the Respondent had the Complainant’s globally recognised mark in mind when registering the disputed domain name, which exactly reproduces the Complainant’s mark;
- the Complainant’s global fame increases the likelihood that the Respondent intended to divert the Complainant’s customers for commercial gain at the Complainant’s expense;
- the fact that the disputed domain name was offered for sale in USD shows that the Respondent intended to target the United States, where the Complainant is well-known, making it more likely that the Respondent was aware of the Complainant and its reputation;

- it is inconceivable that the Respondent was not aware of the Complainant or its marks as the Respondent has used the disputed domain name in bad faith to sell a desirable domain name that would create a likelihood of confusion with the Complainant's mark;
- the disputed domain name constitutes a passive holding in bad faith; and
- intentionally hiding the Respondent's contact information behind a proxy service is further evidence of bad faith.

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.

The Complainant has produced evidence of the above-mentioned trade marks for MOTHERHOOD. owned by Motherhood Maternity Shops, Inc. The Panel assumes that this company is connected with the Complainant. In these circumstances, and in the absence of any objection from the Respondent, which has not appeared in the proceeding, the Panel thinks it reasonable to infer that the Complainant has rights in this trade mark for the purpose of standing to file the Complaint. [WIPO Overview 3.0](#), section 1.4.1. In any case, the Complainant itself owns the above-mentioned United Kingdom trade mark.

Accordingly, 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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

It is unnecessary for the Panel to consider this element in view of the Complainant's failure to establish the third element, as discussed below.

C. Registered and Used in Bad Faith

While a panel may draw appropriate inferences from a respondent's default, a respondent default is not necessarily an admission that the complainant's claims are true. [WIPO Overview 3.0](#), section 4.3.

Here, notwithstanding the Respondent's default, for the following reasons the Panel considers that the Complainant has failed to establish the third element on the balance of probabilities:

1. The disputed domain name comprises the common dictionary term "motherhood".
2. The Complainant has produced minimal evidence in support of its alleged substantial reputation in the United States, simply some screenshots relating to various awards since 2021, which in any case are apparently related to the brand MOTHERHOOD MATERNITY and not specifically to MOTHERHOOD.
3. The Complainant has provided no evidence at all supporting its alleged global reputation including in France, where the Respondent is located.
4. The fact that the disputed domain name is registered in the ".ai" TLD does not assist the Complainant. As the Complainant acknowledges, "ai" is likely to denote "artificial intelligence" to Internet users, and the Complainant has provided no reason to think that the Internet users have any reason to associate the Complainant with this term.
5. There is no evidence that the Respondent has ever used the disputed domain name in connection with the Complainant's industry or otherwise to target the Complainant in some way.

Accordingly, the evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trade mark.

As regards the following submissions by the Complainant:

- That the fact that the disputed domain name resolves to a webpage offering the disputed domain name for sale, and links to a domain name trading website, indicate that the Respondent acquired the disputed domain name for sale to the Complainant or a competitor in accordance with paragraph 4(b)(i) of the Policy. Generally, panels have found that the practice of registering a domain name for resale would not by itself support a claim that the respondent registered the domain name in bad faith with the primary purpose of selling it to a trade mark owner (or its competitor). [WIPO Overview 3.0](#), section 3.1.1. As indicated above, the Complainant has not provided evidence indicating that, on balance, the Respondent likely acquired the disputed domain name for sale to the Complainant based on the Complainant's trade mark rather than for sale to the world at large as dictionary-word domain name. In those circumstances, the mere fact that the disputed domain name happens to correspond to the Complainant's mark does not assist the Complainant.
- That offering the disputed domain name for sale in USD shows that the Respondent was targeting the United States, where the Complainant claims to be well-known. Not only has the Complainant failed to establish such fame, as discussed above, but the Panel does not consider that the offering of a domain name for sale in USD of itself indicates that the seller was specifically targeting United States purchasers.
- That the Respondent has somehow set out to divert the Complainant's customers for commercial gain. As mentioned above, all that the Respondent has done here is offer for sale a domain name that constitutes a common dictionary term. The Panel does not see how such a step can be equated to an attempt to confuse the customers of an entity that happens to own a corresponding trade mark.
- That the Respondent intentionally hid its contact information behind a proxy service, which constitutes further evidence of bad faith. However, such services are potentially legitimate, as well as being very common nowadays, and the Complainant has not established that the Respondent likely used the service for an illicit purpose, e.g., to try and evade a UDRP proceeding. [WIPO Overview 3.0](#), section 3.6.

The Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: April 24, 2024