

ADMINISTRATIVE PANEL DECISION

Cheyne Capital Holdings Limited v. Sheri Kempe, cheynegroup
Case No. D2022-2070

1. The Parties

The Complainant is Cheyne Capital Holdings Limited, United Kingdom, represented by Dechert, United Kingdom.

The Respondent is Sheri Kempe, cheynegroup, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <cheynegroup.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2022. On June 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 8, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 14, 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 amended Complaint on June 16, 2022.

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 June 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2022. The Respondent did not submit any formal response. The Respondent sent informal communications to the Center on June 28, 2022, July 13, 2022, and July 15, 2022. Accordingly, the Center notified the parties that it would proceed to panel appointment on July 13, 2022.

The Center appointed John Swinson as the sole panelist in this matter on August 4, 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.

The Panel issued a Procedural Order on August 17, 2022, requesting further information from the Parties, as discussed below. No response was filed by either Party.

4. Factual Background

The Complainant, a British Virgin Islands, United Kingdom company, is an investment manager across a range of asset classes including in corporate credit, real estate and asset backed strategies, event driven, equity and equity-linked strategies, distressed European credit, social impact property, and tailor-made investment strategies. The Complainant launched its first fund in 2000.

The Complainant owns trademark registrations for the trademark CHEYNE, including in the United States and the United Kingdom. An example is United States Registration No. 2661408 in class 36 for CHEYNE with a filing date of June 12, 2000.

The disputed domain name was registered on May 6, 2015.

The Respondent did not file a formal Response, so little is known of the Respondent. Three emails (discussed below) were received by the Center from Mr. James Cheyne, with a signature block stating he is managing partner of The Cheyne Group, LLC from Texas, United States.

The Panel conducted some online searches, as the Panel is entitled to do (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.8.), and discovered that the Respondent (Sheri Kempe of "cheynegroup") has an address in Garland, Texas; that a company called The Cheyne Group Llc has the same address as the Respondent; that Mr. James Cheyne has the same email address as listed for The Cheyne Group Llc; that Mr. James Cheyne is listed as a real estate broker in a Texas office of Keller Williams; and that the Respondent Sheri Kempe is listed as a real estate broker in the same Texas office of Keller Williams.

The disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant made the following submissions:

The Complainant owns the CHEYNE trademark and has registrations for the CHEYNE trademark.

Through its longstanding success operating under the CHEYNE trademark, the Complainant has developed a substantial international reputation and goodwill in the CHEYNE trademark.

Cheyne's reputation is further demonstrated by its industry recognition, having won multiple awards, many of which pre-date the registration of the disputed domain name, for its products and services.

The Complainant's rights in the CHEYNE trademark have been re-affirmed by WIPO on several occasions, the most recent of which was *Cheyne Capital Holdings Limited v. Contact Privacy Inc. Customer 1241797044 / Michael Jacoby*, WIPO Case No. [D2019-0950](#), in which it was held that the disputed domain name be transferred to the Complainant. In that case, it was also held that "the Panel finds the trademark

CHEYNE is so widely known in the field of funds management, that it is inconceivable that the Respondent might have registered a domain name containing this mark without knowing of it".

The disputed domain name consists of the clearly recognizable CHEYNE trademark together with the wholly descriptive word "group". It is well established that where a domain name wholly incorporates a trademark in its entirety, that domain name can be confusingly similar to the trademark.

The addition of the descriptive word "group" therefore fails to counter the similarity of the disputed domain name to the CHEYNE trademark. Indeed, the addition of "group" increases the confusing similarity of the disputed domain name to the CHEYNE trademark as the word is descriptive of the Complainant's company group structure.

Due to the reputation and international presence of the Complainant, it is reasonable to assume that the Respondent was aware of the Complainant and its rights and reputation in the CHEYNE trademark at the time the disputed domain name was registered.

The Respondent chose the disputed domain name specifically because it is confusingly similar to the CHEYNE trademark associated with the Complainant. The Respondent chose the disputed domain name because it knew: (i) that the CHEYNE trademark were well-known and associated with the Complainant; (ii) that use of the disputed domain name would create an association with the Complainant's business as a result of its similarity to the CHEYNE trademark.

Alternatively, the Respondent had constructive knowledge or should have known of the Complainant's rights in the CHEYNE trademark which would have been revealed by a basic search of the words "cheyne" or "cheyne group" using an Internet search engine.

There is no obvious reason why the disputed domain name has been selected by the Respondent, leading to the suggestion that it was selected to trade off the reputation of the CHEYNE trademark.

At the time the Complainant conducted its searches, the disputed domain name hosted a website consisting of a directory of pay-per-click ("PPC") links. The screenshot of the website at the disputed domain name as it appeared on May 20, 2022, shows links to products that are identical or at the very least highly similar to the goods covered by the Complainant's registrations and the goods and services for which the Complainant has developed goodwill and reputation under the CHEYNE trademark, such as "Investment Funds" and "Investment Management". The links compete with the Complainant's offering.

Investment management is a highly regulated sector in which businesses require regulatory approvals in order to trade. The Respondent has had over six years since the initial registration of the disputed domain name to commence legitimate or fair use and has not discernibly availed itself of that opportunity in any jurisdiction.

In any event, given that the Respondent has registered the disputed domain name that includes the Complainant's CHEYNE trademark identically, in no circumstances would any use of the disputed domain name by the Respondent constitute legitimate or fair use of the disputed domain name unless it was authorized by the Complainant. Any use of the disputed domain name would take unfair advantage of the Complainant's rights in the CHEYNE trademark and misleadingly divert users to the Respondent's website instead of the Complainant's website by use of the Complainant's CHEYNE trademark.

The Respondent has registered the disputed domain name primarily for the purpose of disrupting the Complainant's business. For the reasons set out above, the Respondent must have been aware of the CHEYNE trademark and the Complainant's rights in the CHEYNE trademark when it registered the disputed domain name. Moreover, the Respondent could not have chosen or subsequently used the CHEYNE trademark in the disputed domain name for any reason other than to trade on the Complainant's rights in that name and to confuse Internet users and by that means to attract them to a website with a name including the CHEYNE trademark with the intention to profit from the reputation and goodwill of the CHEYNE trademark.

The mere registration alone of the disputed domain name by the Respondent and not the Complainant has meant that the CHEYNE trademarks are not as unique as they were prior to the registration of the disputed domain name. This lack of uniqueness and dilution means that the CHEYNE trademark is not acting as a guarantee of origin that the goods and services provided in relation to the CHEYNE trademark are provided uniquely by or with the endorsement of the Complainant and is thereby adding to the dilution of the reputation in the CHEYNE trademark.

In the absence of any legitimate interests in the disputed domain name, the registration of the disputed domain name by the Respondent cannot have been in good faith.

The disputed domain name hosted a website consisting of a directory of PPC links and the website has included links to using the terms "Investment Funds" and "Investment Management" being goods that are identical to the categories of goods covered by the Complainant's registrations and the goods for which the Complainant has developed substantial goodwill and reputation under the CHEYNE trademark.

The Respondent's passive holding of the disputed domain name is an indication of bad faith use.

B. Respondent

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

Mr James Cheyne sent three emails to the Center (from a Gmail address comprising "thecheynegroup"). In summary, those emails made the following submissions:

He had not received a copy of the Compliant.

"We cannot imagine what anyone would possibly find offensive in our name."

"My ancestors came from Europe, so with the name Cheyne and spelled the same as my family here, they must be related and I would like to talk to them. Family members here do not sue each other, especially for something like our name. I am 76 years old and have never heard from anyone in Europe. Let me know who the relative is and they are welcome to call me or email me. If they want my contact information, just have them email me."

Twelve years ago, his lawyers conducted searches and established the company called The Cheyne Group, LLC.

Mr Cheyne also expressed concern that the case emails may be a scam.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

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

The onus of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the 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

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant owns trademark registrations for CHEYNE.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#); and *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunweg*, WIPO Case No. [D2021-3279](#).

The disputed domain name includes CHEYNE in its entirety, and includes the word “group”.

The Panel concludes that the disputed domain name is confusingly similar to the Complainant’s CHEYNE trademark.

The Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

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

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of a respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie*-case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts that the Complainant has not licensed or otherwise permitted or authorised the Respondent to use the CHEYNE trademark or to apply for a domain name incorporating the CHEYNE trademark. The Complainant also asserts that the Respondent's name does not include the CHEYNE trademark or anything similar and that the Respondent is not commonly known by the CHEYNE trademark. The Complainant also asserts that the Respondent is not making any legitimate noncommercial use of the disputed domain name.

The Complainant does not address in any detail the issue that the Respondent's name, as listed in the Registrar's records, is "cheynegroup". The Complainant did not respond to the Panel's Procedural Order that requested the Complainant to submit comments on the factual issues summarized in section 4 above including that there is a company in Texas called The Cheyne Group, LLC (that appears to be the correct legal name for the Respondent or associated with the Respondent).

The emails received by the Center state that Mr. Cheyne established The Cheyne Group, LLC.

There is no suggestion that The Cheyne Group, LLC is not a legitimate company.

From emails received by the Center, Mr. Cheyne is a 76 year old real estate broker in the Dallas area, and there is no evidence that he has knowledge of or operates in the field of funds management or European real estate in which the Complainant operates. The Complainant did not address this in the Complaint or in response to the Procedural Order.

The Complainant states: "... given that the Respondent has registered a Domain Name that includes the Complainant's [CHEYNE trademark] identically, in no circumstances would any use of the Domain Name by the Respondent constitute legitimate or fair use of the Domain Name unless it was authorised by the Complainant. Any use of the Domain Name would take unfair advantage of the Complainant's rights in the [CHEYNE trademark] and misleadingly divert users to the Respondent's website instead of the Complainant's website by use of the Complainant's [CHEYNE trademark]." The Panel considers this to be an overstatement of the Complainant's rights. Registration and use of a domain name corresponding to a surname does not necessarily take unfair advantage of a complainant's trademark rights. See, for example, *CKL Holdings N.V. v. Paul Flammea*, WIPO Case No. [D2016-1340](#); and *Boller, Winkler AG v. Craig Schlossberg, Image Info, LLC*, WIPO Case No. [D2022-2222](#).

The Panel finds that the Respondent has rights or legitimate interests in the disputed domain name under paragraph 4(c)(ii) of the Policy.

The Complainant does not succeed on the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain names in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Panel accepts that the Complainant and its trademark are well-known in financial circles, including in the United States.

However, even if the Respondent was aware of the Complainant (which the Panel considers to be unlikely), the Panel is of the view that the Respondent registered the disputed domain name because it is the Respondent's corporate name, and that the corporate name was selected because it is the name of its founder, Mr. James Cheyne. The Panel considers it unlikely that the Respondent selected the disputed

domain name because of the Complainant.

It does not appear that the Respondent used the term “group” in the disputed domain name because of the Complainant. There is no evidence that the Complainant is known as “Cheyne Group” or similar. Compare the decision of *Panavision International, L.P. and Panavision Inc. v. Registration Private, Domains By Proxy, LLC / Madan Pania, PANIAVISION*, WIPO Case No. [D2022-1835](#), where the respondent in that case likely selected the “vision” ending to the disputed domain name because of the Complainant’s famous trademark.

Thus, the Panel does not find that the Respondent registered the disputed domain name in bad faith and accordingly the Complainant does not meet the third element of the Policy.

In addition, the disputed domain name is not currently being used.

The Complainant relies on the doctrine of passive holding to demonstrate bad faith use, in accordance with the principles set out in well-known cases cited by the Complainant, including *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). See also *Virgin Enterprises Limited v. Cesar Alvarez*, WIPO Case No. [D2016-2140](#). In the *Nuclear Marshmallows* case, the complainant’s trademark was one of the most famous in Australia, the complainant provided substantial evidence of its reputation in Australia, the respondent had an Australian address and was likely aware of the complainant, and the respondent used a fake name to conceal his or her identity. In *Virgin Enterprises Limited*, the respondent offered to sell the disputed domain name to the complainant, and the complainant’s trademark was internationally famous. The Complainant in the present case has not provided sufficient evidence to establish that the Respondent registered the disputed domain name because of the Complainant, and thus there is not passive holding under the test set out in the *Telstra* case sufficient to establish bad faith use. See, for example, *Kelin S.r.l. v. Privacy Service provided by Withheld for Privacy ehf / Vincent Cammarata*, WIPO Case No. [D2022-0746](#).

At one time, the disputed domain name resolved to a parking page that had what appears to be registrar generated links such as “How to Publish Own Book”, “How to Publish Christian a Book”, “Investment Funds”, and “Investment Management”. In the circumstances of this case, where the disputed domain name corresponds to the Respondent’s name, these facts do not clearly establish bad faith use of the disputed domain name or that the Respondent registered the disputed domain name to trade off the Complainant’s reputation.

The Complainant does not succeed on the third element of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: September 7, 2022