

ADMINISTRATIVE PANEL DECISION

More Entertainment AB v. Jonathan Norling, NZD Securities, Inc.
Case No. D2022-3420

1. The Parties

The Complainant is More Entertainment AB, Sweden, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Jonathan Norling, NZD Securities, Inc., United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <cmore.app> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 14, 2022. On September 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 16, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 September 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2022. The Complainant requested a suspension of the administrative proceeding. The Notification of Suspension was sent to the parties on September 30, 2022, suspending the proceeding until October 30, 2022. The administrative proceeding was reinstated on November 2, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on November 9, 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.

4. Factual Background

Since 2003, the Complainant has provided television programming in the Nordics under the name “Complainant More”, including via a streaming platform and app. There have been more than one million downloads of the Complainant’s app from Google Play and the app is ranked number 10 for “Entertainment” in Apple’s App Store. As of June 2022, the Complainant had around 700,000 subscribers. A market study in July 2022 shows that around 30-34% of people between 15 and 64 in Sweden know of the Complainant’s brand.

The Complainant owns a number of trade marks for CMORE including Swedish trade mark No. 372332, filed on November 5, 2003, registered on May 20, 2005, in classes 9, 38, and 41.

The Complainant operates its primary website at “www.cmore.se”, which averaged approximately 4.9 million visits during the period from April to June 2022.

The disputed domain name was registered on March 11, 2022.

The disputed domain name has been used to resolve to a default test page.

The Complainant sent cease and desist letters to the Respondent on July 1, 8, and 20, 2022. On July 20, 2022, the Respondent replied to the Complainant’s third cease and desist letter, stating:

“Yes It’s true that we have registered the domain, but we do not actively using it in any way.

We have by no means infringed upon the rights of the [t]rademark holder by owning a domain that they did not purchase, because we are not actively using the domain name or advertised it. We are just owning it.

However we are willing to sell it to you, but at a fair price.”

Following a response, and chasers, from the Complainant on July 22 and 27, 2022, and on August 2, 2022, the Respondent replied on September 26, 2022, stating: “Just provide where the domain should be transferred to. You should [r]emind your clients to register any and all TLD of their domains.”

5. Parties’ Contentions

A. Complainant

The following is a summary of the Complainant’s contentions.

The disputed domain name is identical to the Complainant’s trade mark.

The Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant has not authorised the Respondent to use its trade mark.

The Respondent is not commonly known by the disputed domain name, which is completely different to the registrant name.

There is no evidence of use of the disputed domain name for a *bona fide* offering of goods or services.

The Respondent’s offer to sell the disputed domain name to the Complainant is further evidence of the Respondent’s lack of rights or legitimate interests.

The disputed domain name long post-dates the Complainant's trade marks.

The disputed domain name was registered and is being used in bad faith.

The Complainant's trade mark has been internationally well known since long before the Respondent registered the disputed domain name.

It is inconceivable that the Respondent did not register specifically to target the Complainant. The Respondent's registration of a domain name identical to the Complainant's trade mark demonstrates the Respondent's familiarity with the Complainant's well-known brand. The Respondent's LinkedIn profile indicates that he is located in Sweden, where the Complainant operates, and not the United States, despite the latter being shown as the registrant location in the Whois information. The Respondent's use of the Top-Level Domain ("TLD") suffix ".app" is a further indicator that the Respondent was aware of the Complainant and its trade mark.

The disputed domain name constitutes a passive holding in bad faith. The disputed domain name was registered to create a likelihood of confusion with the Complainant's mark. There is no plausible good faith reason for the Respondent to have registered the disputed domain name.

The Respondent's offer to sell the disputed domain name to the Complainant is further evidence of bad faith, as is the Respondent's original use of a privacy service and the Respondent's failure to respond positively to the Complainant's cease and desist correspondence.

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. Consent to Remedy - Preliminary Issue

The Respondent indicated in its email of September 26, 2022, that it consented to transfer of the disputed domain name to the Complainant without the need for a decision by the Panel.

Section 4.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") observes that many panels will order transfer solely on the basis of a consent to transfer by the respondent on the record but that panels may still find it appropriate to proceed to a substantive decision on the merits in certain circumstances.

Here, the Panel has decided to proceed to a substantive determination on the basis that, in its previous communication, the Respondent expressly disclaimed infringement of the Complainant's rights and, also, the Panel has some doubt over the meaningfulness of the Respondent's consent, given that the suspension of the proceedings for the purposes of settlement following the Respondent's communication did not result in transfer of the disputed domain name to the Complainant.

B. Identical or Confusingly Similar

The Complainant has established registered rights in the mark C MORE, as well as unregistered trade mark rights deriving from the Complainant's extensive and longstanding use of that mark.

Disregarding the TLD suffix, which is excluded from the comparison, the disputed domain name is identical to the Complainant's trade mark.

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

C. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the Respondent's email of July 20, 2022, confirms that the disputed domain name has not been actively used and, accordingly, the disputed domain name could not have been used for a *bona fide* offering of goods or services. Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

D. Registered and Used in Bad Faith

In the Panel's view, it is appropriate to consider this case under the principles of "passive holding".

Section 3.3 of the [WIPO Overview 3.0](#) explains that, from the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding.

In this case, the Panel considers that the following cumulative circumstances are indicative of passive holding in bad faith:

1. the distinctiveness and fame of the Complainant's mark;
2. the Respondent's use of the ".app" TLD, which strongly denotes the Complainant's services;
3. the failure of the Respondent, when responding to the Complainant's cease and desist letter on July 20, 2022, to explain its purpose in registering the disputed domain name or to deny knowledge of the Complainant when registering the disputed domain name;
4. the failure of the Respondent to submit a formal response or to provide any evidence of actual or contemplated good faith use; and

5. the implausibility of any good faith use to which the disputed domain name may be put.

For the above reasons, the Panel considers that the Complainant has established the third element of 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 names <cmore.app> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: November 23, 2022