

ADMINISTRATIVE PANEL DECISION

Mav Media, LLC v. Domain Privacy, Above.com Domain Privacy Case No. D2022-3761

1. The Parties

The Complainant is Mav Media, LLC, United States of America (“United States”), represented by Silverstein Legal, United States.

The Respondent is Domain Privacy, Above.com Domain Privacy, Australia.

2. The Domain Name and Registrar

The disputed domain name <dirtyroule.com> 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 October 7, 2022. On October 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 10, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 11, 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 amendment to the Complaint on October 11, 2022.

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 October 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 9, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on November 14, 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 language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant owns and operates a video chat platform for adults that allows users to chat with each other on the Internet by video. The Complainant is the owner of the United States trademark DIRTYROULETTE registered on December 27, 2016 under No. 5109884 for services in class 38.

The disputed domain name was registered on December 22, 2021 and at the date of the Complaint resolved to a landing page displaying Pay-Per-Click ("PPC") links for unrelated services. At the date of the decision the website at the disputed domain name offers adult entertainment services in direct competition with the Complainant's services.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is identical or confusingly similar to its registered trademark DIRTYROULETTE, as the disputed domain name is a misspelled version of the Complainant's trademark, the letters "tte" being removed from the end of the Complainant's trademark. The use of a part of the Complainant's trademark does not prevent a finding of confusing similarity.

As regards the second element, the Complainant argues that the Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent, whether express or implied, to use the Complainant's trademarks in the disputed domain name or in any other manner. The Respondent is not commonly known by the disputed domain name. The Complainant also argues that the disputed domain name resolves, through redirection, to a rotating set of third-party websites unaffiliated with the Complainant in an apparent scheme for the Respondent to derive commissions from "affiliate marketing" programs, which is not a *bona fide* offering of goods and services or a legitimate noncommercial fair use.

With respect to the third element, the Complainant argues that the disputed domain name is a typo-squatted version of the Complainant's trademarks and that the intentional misspelling of a complainant's trademark to commercially benefit from a confusing similarity between a disputed domain name and the trademark is evidence of bad faith under the Policy. As regards the use, the Complainant argues that the disputed domain name redirects users to third-party websites or to a general parked page that contains sponsored listings, therefore, the Respondent has registered and is using the disputed domain name primarily to profit from and exploit the Complainant's trademark. Moreover, the Complainant's trademark DIRTYROULETTE is unique and arbitrary such that it is unlikely that the Respondent devised the term in the disputed domain name on its own.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters

No communication has been received from the Respondent in this case. However, given that the Complaint was sent to the relevant address disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent’s failure to file any Response.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

6.2. Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

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

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights in the DIRTYROULETTE trademarks.

The disputed domain name incorporates the DIRTYROULETTE trademark, dropping the letters “tte” at the end of the trademark and adding the generic Top-Level Domain (“gTLD”) “.com”, which is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. The Panel considers that the disputed domain name includes relevant features of the DIRTYROULETTE trademark, as an abbreviation of this trademark or as a deliberate misspelling of the Complainant’s trademark, and that the Complainant’s trademark is recognizable in the disputed domain name.

In the circumstances of this case, the content of the website at which the disputed domain name resolves further confirms the confusing similarity, as the website provides services similar to those of the Complainant. See sections 1.7, and 1.15, of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark DIRTYROULETTE and claims that the Respondent has no legitimate reason, therefore no rights or legitimate interests in order to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, according to the un rebutted evidence put forward by the Complainant, at the date of the Complaint the disputed domain name was used to host a parked page comprising PPC links to third-party services. According to section 2.9 of the [WIPO Overview 3.0](#), “[a]pplying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users”. The fact that the links on the Respondent’s webpage have no obvious connection with the Complainant is insufficient for the Respondent’s activities to comprise a *bona fide* offering of goods and services, as the distinctive character of the Complainant’s trademark is such that any use of the disputed domain name by the Respondent capitalizes on the repute of the Complainant’s trademark and cannot amount to use in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy.

At the date of the decision, the disputed domain name is used to offer competing services and thus suggest a connection with the Complainant. The Panel finds such use to be confusing. As such it cannot amount to use in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. Also, such use cannot be legitimate noncommercial or fair use of the disputed domain name under paragraph 4(c)(iii) of the Policy.

In addition, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Respondent has not replied to the Complainant’s contentions, claiming any rights or legitimate interests in the disputed domain name. With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, “in particular but without limitation”, be evidence of the disputed domain name’s registration and use in bad faith.

The Complainant’s registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. Given the distinctiveness of the Complainant’s trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s trademarks, and to target those trademarks. This inference is further supported by the typosquatting nature of the disputed domain name and by the current use of the disputed domain name to resolve to a website offering services similar to those of the Complainant.

The disputed domain name was used by the Respondent to direct to a website displaying PPC advertisements. Given the confusing similarity between the Complainant’s trademark and the disputed domain name, the distinctiveness of the Complainant’s trademark, Internet users would likely be confused into believing that the Complainant is affiliated with the website to which the disputed domain name resolves. Presumably, the Respondent intends to benefit from the confusion created: it is likely that the Respondent earns income when Internet users click on the links in search of the Complainant’s services.

At the date of the decision, the disputed domain name resolves to a website offering similar services to those of the Complainant. Given such use, and also the confusing similarity between the Complainant’s DIRTYROULETTE trademark and the disputed domain name, the Panel considers that the disputed domain

name is intended to attract Internet users by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites or other online location or of a service offered on such other online location within the terms of paragraph 4(b)(iv) of the Policy.

Moreover, the Respondent has not participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible. The apparent change of the content of the website to which the disputed domain name resolves after the receipt of the Complaint, further supports a finding of bad faith.

Based on the evidence and circumstances of this case, the Panel concludes that the disputed domain name was registered and is being used in bad faith.

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 <dirtyroule.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: November 28, 2022