

ADMINISTRATIVE PANEL DECISION

Mav Media, LLC v. Karl Schnurch, EdenMedia
Case No. D2022-3883

1. The Parties

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

The Respondent is Karl Schnurch, EdenMedia, Seychelles.

2. The Domain Names and Registrar

The disputed domain names <dirtyroulet.com>, <dirtyroulwte.com>, and <dirtyrulete.com> are registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 17, 2022. On October 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 19, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (on behalf of dirtyroulet.com, dirtyroulwte.com, and dirtyrulete.com owner, c/o whoisproxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 19, 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 19, 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 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 11, 2022.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on November 17, 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

The Complainant is a multimedia company and owns and operates the website located at the domain name <dirtyroulette.com> and has used its domain name for several years to provide a video chat platform that allows users to chat with each other on the World Wide Web by video.

The Complainant owns the United States trademark registration for the trademark DIRTYROULETTE No. 5109884, registered on December 27, 2016.

The Complainant is the owner of the <dirtyroulette.com> domain name.

The Respondent registered the disputed domain names:

- <dirtyroullet.com> on March 31, 2019;
- <dirtyroulwtte.com> on August 22, 2019;
- <dirtyrulete.com> on December 31, 2019.

The disputed domain names are used to direct visitors to sites containing pay-per-click (“PPC”) advertising the Complainant’s competitors to offer services in direct competition with the Complainant’s services.

5. Parties’ Contentions

A. Complainant

The arguments put forward by the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain names are confusingly similar to the Complainant’s trademark. They consist of a common, obvious or intentional misspelling of the Complainant’s trademark. They are typo squatted versions of Complainant’s trademark.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is not commonly known by the disputed domain names. The Respondent uses the disputed domain names without complying with the requirements for a *bona fide* offering of goods and services. The Respondent has not been authorized by the Complainant to register the disputed domain names.

On the third element of the Policy, the Complainant asserts that it has extensively used the DIRTYROULETTE trademark and the Complainant and its predecessor have developed extensive common law rights throughout the world. Registering a domain name that is confusingly similar to a widely known trademark creates a presumption of bad faith. There is no benign reason for the Respondent to have registered the disputed domain names. The intentional misspelling of a complainant’s trademark to commercially benefit from a confusing similarity between a disputed domain name and the trademark can evidence bad faith. The Respondent registered the confusingly similar disputed domain names to offer services in direct competition with the Complainant. The disputed domain names are used to direct visitors to a site containing pay-per-click advertising to the Complainant’s competitors.

The Complainant thus concludes that the registrations of the disputed domain names were made in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established rights in the DIRTYROULETTE trademark.

The trademark rights are established since 2016 through the Complainant's trademark registration.

The disputed domain names are intentional misspellings of the Complainant's DIRTYROULETTE trademark followed by the generic Top Level Domain ("gTLD") ".com".

The applicable Top Level Domain ("TLD") in a domain name (*e.g.*, ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see section 1.11.1 of [WIPO Overview 3.0](#)).

The confusingly similarities exist where the trademark is recognizable within the disputed domain names. See *Andrey Ternovskiy dba Chatroulette v. Registration Private, Domains By Proxy, LLC / I S, ICS INC / VMI INC / Domain Admin, Hush Whois Protection Ltd.*, WIPO Case No. [D2019-0642](#).

Therefore, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant, under the second requirement of paragraph 4(a)(ii) of the Policy, needs to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

While the overall burden of proof in UDRP proceedings is on the Complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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 (see section 2.1 of the [WIPO Overview 3.0](#)).

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 trademark in the disputed domain names or in any other manner.

The Complainant has provided evidence that the disputed domain names resolve to a website displaying services that are in direct competition with the Complainant's services. Using a disputed domain name to host commercial websites that advertise goods and services in direct competition with the trademark owner does not give rise to rights or legitimate interests. (See *Fenix International Limited v. Registration Private, Domains By Proxy, LLC. / Jason Douglas*, WIPO Case No. [D2021-0829](#))

There is no legitimate basis for the Respondent's registration or use of the disputed domain names (which are confusingly similar to the Complainant's trademark) except the fact that the Respondent creates a risk of misrepresentation by using the disputed domain names.

Therefore, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant, under the third requirement of paragraph 4(a)(iii) of the Policy, needs to establish that the disputed domain names have been registered and are being used in bad faith.

[WIPO Overview 3.0](#), section 3.2.2 reads: "Knew or should have known: Noting the near instantaneous and global reach of the Internet and search engines and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known that its registration would be identical or confusingly similar to a complainant's mark."

The Complainant has been extensively using the DIRTYROULETTE mark for years and has rights in it. The Respondent intentionally misspelled the Complainant's trademark in the disputed domain names. The intentional misspelling of a complainant's trademark to commercially benefit from a confusing similarity between a disputed domain name and the trademark can evidence bad faith ([WIPO Overview 3.0](#), section 3.2.1). Using the disputed domain names for offering services in direct competition with the Complainant's trademark underlines that the Respondent knew about the Complainant's trademark.

Also, the disputed domain names are being used to direct visitors to a site containing pay-per-click advertising to the Complainant's competitors. This is an evidence of bad faith use.

Lastly, the Respondent hid its identity by using a privacy/proxy registration service. This is an additional indicator of bad faith in the circumstances of this case (see section 3.6 of the [WIPO Overview 3.0](#)).

The bad-faith allegations set out above, combined with the Respondent's lack of rights or legitimate interests in the disputed domain names, lead to the conclusion that they are registered and used in bad faith.

Thus, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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, <dirtyroullet.com>, <dirtyroulwte.com> and <dirtyrulete.com> be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: December 1, 2022