

ADMINISTRATIVE PANEL DECISION

Susan Garthwaite v. Pascal Flamur Musaj

Case No. D2022-4196

1. The Parties

The Complainant is Susan Garthwaite, United States of America (“United States”), represented by Minc LLC, United States.

The Respondent is Pascal Flamur Musaj, Switzerland.

2. The Domain Name and Registrar

The disputed domain name <susangarthwaite.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 31, 2022. On November 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 7, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Whois Privacy Corp.) and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 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 November 18, 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 November 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 12, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on December 22, 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

According to the Complaint, the Complainant is a religious / spiritual author and speaker and retreat leader. Amongst other things, in September 2021, her book, *Sanit Hildegard: Ancient Insights for Modern Seekers* was published under her name, Susan M. Garthwaite.

From sometime from about May 2021 until sometime after March 2022 (but before July 2022), the Complainant was the holder of the disputed domain name.

During that time, the disputed domain name resolved to a website, headed "Susan Garthwaite Spiritual Director | Spiritual Writer | Retreat Leader" promoting the Complainant's book (both pre-publication and following publication), providing links to interviews the Complainant participated in for a number of podcasts and radio shows as well as bookshop promotional events.

In the (northern) summer of 2022, according to the Complaint, the Complainant hosted a 4-part webinar series from her website which was shared to hundreds of individuals.

In addition, in the year or so before the events leading to this dispute, as evidenced by her current website at "<https://susanmgarthwaiteauthor.com/>" the Complainant was the presenter or retreat leader at numerous events for organisations in the Chicago area including Loyola University, the Catholic Theological Union, the Archdiocese of Chicago Parishes, and Committee on Women in the Church.

Although the Complainant had set the registration of the disputed domain name to "auto-renew", that did not happen apparently as a result of some error made by the registrar at the time.

(According to the Complaint, the Complainant's then registrar has admitted and acknowledged that the failure to renew the registration of the disputed domain name in the Complainant's name was the then registrar's fault. Indeed, the then registrar hosts a page specifically redirecting browsers to the Complainant's new website: "<https://freshysites.com/portfolio/susan-garthwaite/>" and announced the launch of the replacements website on its Facebook page.)

As a result of the failure to renew the registration, the Respondent became the registrant on or about July 12, 2022, presumably as a result of drop catching or some similar exercise.

The disputed domain name now resolves to a website which purports to be providing information about travel to "adventurous" locations and featuring a curvaceous young lady reclining on a bed in her lingerie. The information about visiting the Netherlands, which refers to the beautiful beaches of Aruba, contains a link to "Fortworth Escorts". There is also a link to a YouTube video entitled "Guide to booking an esc*rt, comprehensive guide" posted by "Narissacupcakes".

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant does not hold any registered trademarks. Nonetheless, it is well recognised under the Policy that rights in an unregistered trademark may be sufficient. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.3.

The materials in the Complaint and available on the Complainant's website indicate that the Complainant has been using her name "Susan Garthwaite" to distinguish her services as an author, speaker and retreat leader in religious and spiritual matters before the events leading to this dispute. Accordingly, the Panel finds that the Complainant has developed at least an incipient reputation in her community in her name. See e.g., *Cox & Kings India Limited v. Rakesh Sud*, WIPO Case No. [D2000-0411](#); *Pacific-10 Conference v. Kevin Lee*, WIPO Case No. D2011-0200; *Royal Bank of Canada, Dain Rauscher Corporation and Dain Rauscher Incorporated v. RBCD Ain Rauscher*, WIPO Case No. [D2001-1236](#). See also *Time Warner Inc. and EMI Group plc v CPIC Net* WIPO Case No. [D2000-0433](#) citing *Walt Disney Prod v Kusan* 204 U.S.P.Q 284 (C.D. Cal 1979) and *New West Corp. v. NYM Co. of Cal. Inc.*, 595 F.2d 1194, 1200 (9th Cir. 1979); *Glaxo plc v. GlaxoWellcome Ltd* [1996] FSR 388; 42 IPR 317, *Fletcher Challenge Ltd v. Fletcher Challenge Pty Ltd* [1981] 1 NSWLR 196; [1982] FSR 1, the latter two both approved in *British Telecom plc v. One in a Million Ltd* [1998] 4 All ER 476; 42 IPR 289 (Eng CA).

As the [WIPO Overview 3.0](#), sections 1.1.2 and 1.3 point out, it is not necessary for those rights in an unregistered trademark to have arisen in the same jurisdiction as the Respondent's location being in mind the global nature of the Internet.

Accordingly, the second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of

“likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

Disregarding the “.com” gTLD, the disputed domain name consists solely of the Complainant’s name and unregistered trademark SUSAN GARTHWAITE. The “space” separating the names has been omitted in the disputed domain name, but that is a common convention in domain name practices and can be disregarded as trivial. Apart from anything else, therefore, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

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. 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 the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name after the Complainant began using her trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent’s name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived.

Apart from the title of the page and the inclusion of the disputed domain name in the website’s URL, the website to which the disputed domain name resolves does not reference any person known as “Susan Garthwaite”. On the contrary, it appears to be an exercise in promoting, if anything, “Fortworth escorts” or,

possibly, “Narissa cupcakes” and so has a high potential to tarnish the Complainant’s reputation. What the connection is between “Fortworth escorts”, “Narissa cupcakes”, and the Respondent (located in Switzerland), if any, is unclear.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name.

The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent: see *e.g.*, *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd.* WIPO Case No. [D2010-0470](#).

Paragraph 4(b) identifies situations which may demonstrate that registration or use of a disputed domain name was not in bad faith under the Policy:

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of [the disputed] domain name in bad faith:

(i) circumstances indicating that [the Respondent] has registered or [the Respondent has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of [the Respondent’s] documented out-of-pocket costs directly related to the [disputed] domain name; or

(ii) [the Respondent has] registered the [disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent has] engaged in a pattern of such conduct; or

(iii) [the Respondent has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent’s] web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent’s] website or location or of a product or service on [the Respondent’s] web site or location.

The instances of bad faith set out in paragraph 4(b) of the Policy are examples only, intended to illustrate types of conduct which is caught by the Policy. See *e.g.*, *Do The Hustle, LLC v Tropic Web*, WIPO Case No. [D2000-0624](#).

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 (usually) the complainant.

It does appear that the Complainant’s reputation is somewhat incipient and appears mostly to have involved promotion and delivery of her services in and around Chicago in the United States. The Complainant was

promoting herself (including her book) and her services, however, on the Internet via the website to which the disputed domain name formerly resolved. In addition, the Respondent's website is accessible to anyone anywhere in the world and certainly does not make any attempt to block access to persons from the United States.

Moreover, it appears likely that the Respondent obtained the disputed domain name through a process of drop-catching or similar. In such cases, the question of knowledge or awareness is approached objectively rather than purely subjectively. See e.g., [WIPO Overview 3.0](#), section 3.2.3 and, albeit in a case where a "domainer" was offering the domain name for sale at a vastly inflated price, *Supermac's (Holdings) Limited v. Domain Administrator, DomainMarket.com*, WIPO Case No. [D2018-0540](#). Given the circumstances, the Respondent is on notice that someone has already been using the disputed domain name and so, objectively, is aware of the potential for a conflict with prior third party rights and so put on inquiry.

Furthermore, by not filing a Response, the Respondent has not made any attempt to deny the Complainant's allegations of knowledge or otherwise attempt to explain the basis on which the Respondent is entitled to use the name "Susan Garthwaite".

As already noted in section 5B above, there does not appear to be any connection between the Respondent or the website to which the disputed domain name resolves and the name "Susan Garthwaite".

In these circumstances and in the absence of any rights or legitimate interests in the disputed domain name, it appears that the Respondent has registered the disputed domain name opportunistically to target the Complainant's name; at the very least to tarnish it.

Accordingly, the Panel finds that the Respondent registered the disputed domain name in bad faith for the purposes of the Policy.

Further, bearing in mind that the disputed domain name is identical with the Complainant's mark, its use misrepresents an association with the Complainant which is potentially quite damaging with her public and so constitutes use in bad faith under the Policy.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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 <susangarthwaite.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: January 5, 2023