

ADMINISTRATIVE PANEL DECISION

All Day \$49 Montana Registered Agent, LLC v. Nathan Resnick, 1 DollarMontana, Street Legal Registration and Wasatch Real Estate LLC
Case No. D2022-4302

1. The Parties

The Complainant is All Day \$49 Montana Registered Agent, LLC, United States of America (“United States”), internally represented.

The Respondent is Nathan Resnick, 1 DollarMontana, Street Legal Registration and Wasatch Real Estate LLC, United States, represented by MC Law, PLLC, United States.

2. The Domain Name and Registrar

The disputed domain name <1dollarmontana.com> is registered with Amazon Registrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 11, 2022. On November 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 16, 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 November 16, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

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 December 2, 2022. The Center received informal communications from the Respondent on November 16, December 1, 2, and 21, 2022. In accordance with

the Rules, paragraph 5, the due date for Response was December 22, 2022. The Response was filed with the Center on December 22, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on January 9, 2023. 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 Montana limited liability company operating since 2008 in Kalispell, Montana, United States and offering services online at “www.49dollarmontanaregisteredagent.com” (the Complainant’s website). The Complainant assists non-residents in establishing Montana corporations or limited liability companies, or registering as a foreign business in Montana, and then obtaining tax advantages by licensing their mobile personal or business assets such as vehicles, trailers, and airplanes in Montana. The Complainant advertises a registered agent service charge of USD 49 per year, as reflected in the name of the company.

The Complainant does not have a national registered trademark, and the Complainant’s website does not display trademark symbols or other trademark claims. The Complainant has registered service marks in the State of Montana, including the following:

Mark	Montana State Registration Number	Registration Date	Claimed First Use In Montana
\$ REGISTRATION IN MONTANA	T1310133	September 13, 2022	January 11, 2015
CHEAP \$ MONTANA REGISTERED AGENT	T1310249	September 15, 2022	January 11, 2015

The Complainant also lists other marks that it has registered with the State of Montana, although these are less similar to the disputed domain name:

- REGISTRATION IN MONTANA;
- BEST MONTANA LLC SERVICES;
- MONTANA REGISTERED AGENTS;
- FASTEST AND EASIEST CAR REGISTRATION IN MONTANA;
- MAKE YOUR VEHICLE STREET LEGAL;
- MONTANA CAR REGISTRATION;
- MONTANA VEHICLE REGISTRATION;
- SEE WHY WE'RE BETTER;
- GET STARTED IN MINUTES.

The Registrar’s Whois database shows that the disputed domain name was registered on January 22, 2022, in the name of a domain privacy service (On behalf of 1dollarmontana.com, Whois Privacy Service). After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as Nathan Resnick, an individual residing in the State of Utah, United States.

The disputed domain name is used for a website (the “Respondent’s website”) advertising the services of “\$1 Montana” acting as a registered agent for residents of other states to form Montana corporations or limited liability companies and register their motor vehicles, boats, recreational vehicles, and trailers in the name of those entities. The Respondent competes with the Complainant, using a similar business model but taking a deposit of USD 1 and operating in a different county in Montana, purportedly with lower taxes and shorter processing delays. The Respondent’s website openly engages in comparative advertising, referring to the Complainant by name: “Click To See Why We’re Better Than All Day \$49 Montana Registered Agent.”

The Respondent's website shows that it is operated by "1 Dollar Montana LLC", with contact information for that company in Florence, Montana and a "TM" trademark symbol. A Response was submitted by counsel on behalf of 1 DollarMontana, Street Legal Registration and Wasatch Real Estate LLC . The Response attaches a copy of a filing with the Montana Secretary of State showing that a limited liability company formed on May 13, 2022, under a different name, Richard Gebo LLC, changed its name to 1DollarMontana LLC, with Nathan Resnick as the sole member, on December 2, 2022. This company applied to the United States Patent and Trademark Office ("USPTO") on December 2, 2022, to register 1 DOLLAR MONTANA as a word mark, Serial No. 97701094. That application is awaiting examination at the time of this Decision.

The Complainant filed the Complaint against "1 Dollar Montana, Street Legal Registration and Wasatch Real Estate, LLC" based on the Complainant's understanding of the ownership and control of the disputed domain name and the Respondent's website. The disputed domain name was registered by Nathan Resnick, listing no organization, and the Response was filed on behalf of 1 DollarMontana Street Legal Registration and Wasatch Real Estate LLC, of which Nathan Resnick is the principal. Accordingly, the Panel refers to Nathan Resnick, 1 DollarMontana, Street Legal Registration and Wasatch Real Estate LLC collectively as the "Respondent".

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is confusingly similar to the Complainant's Montana-registered service marks and to the Complainant's domain name, which also includes a number and the words "dollar" and "montana". The Complainant argues as well that the "font, template, website layout and services" on the Respondent's website are "identical" to those of the Complainant's website.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name because the Complainant "has not granted Respondent any rights in any mark, the Domain Name, the website, its copyrighted content, form, layout or templates, nor does Respondent have any way of demonstrating rights in the Domain Name through prior use". The Complainant argues that the Respondent was aware of the Complainant's prior use "of the identical wording as its corporate entity name and in its domain names" and thus could not make a *bona fide* commercial offering of identical services with the disputed domain name. Rather, the Complainant contends, the Respondent registered the disputed domain name intentionally to create confusion by selecting a name that is "the same or similar" to the Complainant's, disrupting the Complainant's business and attracting its customers to a competing website. The Complainant cites as further evidence of bad faith the fact that the Respondent transferred its website hosting from a United States website hosting services to a Russian website hosting service, where the Complainant would find it more difficult to effect legal remedies.

The Complainant requests cancellation of the disputed domain name.

B. Respondent

The Respondent observes that the Complaint is grounded on state-registered service marks, which require a showing of acquired distinctiveness, and largely argued on the basis of the Complainant's domain name and website content rather than trademark rights. The Respondent argues that the Complaint lacks evidence of acquired distinctiveness (or "secondary meaning") for these state-registered marks, which are also comprised of descriptive terms (such as a number, "dollar" or the dollar sign, and the state name "Montana") and in any event are not confusingly similar to the disputed domain name.

The Respondent asserts rights or legitimate interests in the disputed domain name, which it has used for the website of its registered company of the same name before notice of this dispute.

The Respondent observes that it lawfully competes with the Complainant, offering similar services in the same state, so there are naturally similarities in the content of their respective websites. However, the Respondent denies intentionally creating confusion as to source or affiliation and denies knowledge of the Complainant before receiving notice of the Complaint in this proceeding.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the 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 domain name; and (iii) the domain name has been registered and is being used in bad faith. Under paragraph 15(a) of the Rules, “[a] Panel shall decide a 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

The first element of a UDRP complaint “functions primarily as a standing requirement” and entails “a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. The Complainant advances similarities between the disputed domain name and the Complainant’s domain name and website, but those are not relevant to this element of the Complaint. The foundational issue is whether the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Where a complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement for standing (see [WIPO Overview 3.0](#), section 1.2.1). The Complainant refers to its Montana registered marks as “regionally registered”, but that term is used for marks registered by multinational trademark offices such as the Benelux Organization for Intellectual Property, EUIPO (European Union Intellectual Property Organization), and OAPI (African Intellectual Property Organization). The Complainant’s service marks are state registrations in the State of Montana, and such registrations are effected without the same level of examination as national or regional trademark registrations:

“When considering UDRP standing, panels tend to carefully review certain types of automatic/unexamined registered trademarks such as US state registrations (as opposed to US federal registrations); these are not accorded the same deference and may not on their own satisfy the UDRP’s ‘rights in a mark’ standing test.” (see [WIPO Overview 3.0](#), section 1.2.2)

Mindful of this difference, the Panel looks to the record for supporting evidence that the Complainant’s state-registered service marks have acquired distinctiveness, beyond simply registering online with a state, paying a fee, and claiming a first-use date. The two marks first listed above include a symbol representing the United States dollar and the name of the state, “Montana”, so they are the most similar to the disputed domain name, even though they are not a close match. But these marks do not appear on the Complainant’s website at the time of this Decision, and the Complaint provides no examples of their use, past or present. Historical evidence of use is also lacking for the other nine marks listed in the Complaint, which bear little resemblance to the disputed domain name other than the fact that seven of them include the name of the state, “Montana”, which is a descriptive geographic term. The remaining two marks share no terms at all with the disputed domain name. All of the Complainant’s marks could be characterized as descriptive. The Panel considers that such unexamined, state-registered marks of a descriptive nature are not entitled to deference with regard to standing for purposes of the first element of the Complaint but require evidence of acquired distinctiveness, which is lacking on this record. (See, e.g., [WIPO Overview 3.0](#), section 1.3: secondary meaning may be established with evidence of sales, advertising, and media or industry recognition.)

In the context of the above, the Panel does not find persuasive evidence in the current record of trademark or service mark rights sufficient to establish standing for a UDRP complaint. The Panel concludes, then, that the Complainant fails on the first element of the Complaint.

B. Rights or Legitimate Interests

Given the Panel's conclusion on the first element of the Complaint, it is unnecessary to reach a conclusion on the second element. The Panel notes that issues such as the timing of the Respondent's name change and federal trademark application are therefore not addressed in this Decision but may be better addressed in any judicial proceeding concerning claims of unfair competition or other potential legal remedies that the parties may pursue, which are not foreclosed by the current proceeding.

C. Registered and Used in Bad Faith

Given the Panel's conclusion on the first element of the Complaint, it is unnecessary to reach a conclusion on the third element.

7. Decision

For the foregoing reasons, the Complaint is denied.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: January 23, 2023