

ADMINISTRATIVE PANEL DECISION

CrichtonSun LLC v. Oring Ltd

Case No. D2023-0464

1. The Parties

Complainant is CrichtonSun LLC, United States of America (“United States”), represented by Loeb & Loeb, LLP, United States.

Respondent is Oring Ltd, Malta.

2. The Domain Name and Registrar

The disputed domain name <michaelcrichton.net> (the “Domain Name”) 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 February 1, 2023. On February 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 2, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on February 3, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on February 3, 2023.

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 Respondent of the Complaint, and the proceedings commenced on February 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 2, 2023. On March 2, 2023, Respondent sent an email to the Center.

The Center appointed Marina Perraki as the sole panelist in this matter on March 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

Complainant is the assignee of various rights to intellectual property and other proprietary rights of the estate of Michael Crichton, a renowned American best-selling writer who published his first novel in 1969. Per Complaint, following Michael Crichton's death on November 4, 2008, Complainant has continued to license Michael Crichton's works throughout the world via various publishing partnerships and on official and archival websites, including *inter alia*, "www.michaelcrichton.com" and "www.crichtonsun.com".

Complainant owns various publicity rights and intellectual property rights in Michael Crichton's name including the United States trademark registration No. 6,180,446 for CRICHTONSUN (figurative), filed on October 28, 2016, and registered on October 20, 2020, for goods and services in international classes 16 and 41.

Furthermore, as recognised (*Dr. Michael Crichton v. In Stealth Mode*, WIPO Case No. [D2002-0874](#)), Michael Crichton had, through use, acquired common law trademark rights in his name. Per Complaint, such use continues until today by Complainant.

The Domain Name was registered on July 16, 2002, and lead at the time of filing of the Complaint to a website mimicking that of Complainant and copying its content (the "Website"). When a user clicked on "Contact Us", the user was given the option to send an email to the official email address of Complainant. Furthermore, per Complaint, the metadata of the Domain Name showed that Respondent has edited the source information for the Website so that it is displayed to users as Complainant's website "www.michaelcrichton.com". Currently the Domain Name leads to an inactive website.

5. Parties' Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for the transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

A. Identical or Confusingly Similar

The Domain Name incorporates Complainant's CRICHTONSUN trademark in its first and dominant part CRICHTON. This is sufficient to establish confusing similarity. The addition of the first name of "Michael" in the Domain Name does not alter the above.

The generic Top-Level Domain ("gTLD") ".net" is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent's use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name was used to host the Website to impersonate Complainant and attempt to mislead consumers into thinking that the content of the Website originates from Complainant. Such use demonstrates neither a *bona fide* offering of goods nor a legitimate interest of Respondent.

The Domain Name falsely suggested that the Website was an official site of Complainant or of an entity affiliated to or endorsed by Complainant. The Website extensively reproduced, without authorization by Complainant, Complainant's website content, without any disclaimer of association (or lack thereof) with Complainant. Additionally, when a user clicked on "Contact Us", the user was given the option to send an email to the address owned by Complainant. Furthermore, per Complaint, the metadata of the Domain Name showed that Respondent has edited the source information for the Website so that it is displayed to users as Complainant's website "www.michaelcrichton.com".

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation”, are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith.

Because the dominant part of Complainant’s mark had been used by Complainant and its predecessor before the Domain Name registration and noting the content of the corresponding Website, and the prior use of the unregistered rights of Complainant and its predecessor on the name MICHAEL CRICHTON, it is clear that Respondent had Complainant’s mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

Furthermore, the content of the Website gave the impression that it originated from Complainant, prominently reproducing Complainant’s trademark and website content, thereby giving the false impression that the Website emanated from Complainant. This further supports registration in bad faith reinforcing the likelihood of confusion, as Internet users were likely to consider the Domain Name as in some way endorsed by or connected with Complainant ([WIPO Overview 3.0](#), section 3.1.4).

The above further indicates that Respondent knew of Complainant and chose the Domain Name with knowledge of Complainant and its industry (*Safepay Malta Limited v. ICS Inc*, WIPO Case No. [D2015-0403](#)).

As regards bad faith use, Complainant demonstrated that the Domain Name was employed to host the Website which appeared falsely to be that of Complainant. Additionally, The Website extensively reproduced, without authorization by Complainant, Complainant’s website content, without any disclaimer of association (or lack thereof) with Complainant. Additionally, when a user clicked on “Contact Us”, the user is given the option to send an email to the address owned by Complainant. Furthermore, per Complaint, the metadata of the Domain Name showed that Respondent has edited the source information for the Website so that it is displayed to users as Complainant’s website “www.michaelcrichton.com”.

Furthermore, the Domain Name has been operated by intentionally creating a likelihood of confusion with Complainant’s trademark and business. This further supports the finding of bad faith use (*Arkema France v. Aaron Blaine*, WIPO Case No. [D2015-0502](#); *Aktiebolaget Electrolux v. Priscilla Quaiotti Passos*, WIPO Case No. [D2011-0388](#); and [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1).

The Domain Name currently leads to an inactive website. The non-use of a domain name does not prevent a finding of bad faith (See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3).

Under these circumstances and on this record, the Panel finds that Respondent registered and used the Domain Name in bad faith.

Complainant has established Policy, paragraph 4(a)(iii)

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 Domain Name, <michaelcrichton.net>, be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: March 23, 2023