

ADMINISTRATIVE PANEL DECISION

Death Row Records LLC v. Nano Techan

Case No. D2024-2649

1. The Parties

The Complainant is Death Row Records LLC, United States of America (“United States”), represented by Venable, LLP, United States.

The Respondent is Nano Techan, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <deathrowrecordsmerch.shop> (“Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2024. On June 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 28, 2024, 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 (Registrant Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 2, 2024, providing the registrant and contact information disclosed by the Registrar, inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on July 2, 2024.

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 July 11, 2024. In accordance with the Rules, paragraph 5, the due date for

the Response was July 31, 2024. The Respondent did not submit any Response. Accordingly, the Center notified the Respondent's default on August 11, 2024.

The Center appointed Jon Lang as the sole panelist in this matter on August 23, 2024. 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's predecessors-in-interest first established Death Row Records in 1991. It is a world-renowned record label that has played a monumental role in the shaping of hip-hop music since its formation. It is the owner of numerous registered trademarks for DEATH ROW RECORDS in a variety of international classes in numerous countries, including Australia, Canada, China, European Union, Japan, United Kingdom ("UK") and the United States e.g. UK trademark registration No. UK00908870297 with a registration date of February 10, 2010, and the United States trademark registration No. 3884831 with a registration date of December 7, 2010. The Complainant also enjoys common law rights in the DEATH ROW RECORDS Mark dating back to at least 1991. The Complainant principally uses the DEATH ROW RECORDS Mark for consumer services and products, including multimedia goods and services related to music, films and electronic materials.

The Complainant conducts business on the Internet, operating a website at "www.deathrowofficial.com" (and at "www.snoopermarket.com"). The DEATH ROW RECORDS Mark has a strong Internet presence. In addition, hundreds of thousands of consumers follow the Complainant on social media platforms, including Instagram and YouTube.

The Respondent registered the Domain Name on October 5, 2022. The Domain Name resolves to a website (the "Respondent's website") which purportedly offers for sale counterfeit DEATH ROW RECORDS products including clothing, accessories, electronics cases and home goods. The Respondent's website includes a number of false statements that are intended to deceive Internet users into believing that the Respondent is selling authentic DEATH ROW RECORDS merchandise, when it is not. For example, the homepage of the Respondent's website includes the statements "Welcome to the Official Store. Death Row Records was an American record company founded in 1991 by Suge Knight, Dr. Dre, The D.O.C. and Dick Griffey....At our Official Shop, we have the largest collection of image products." and "There are many different exclusive and officially licensed items available....The Official Shop has everything you need, whether you're shopping for yourself or a fellow fan".

5. Parties' Contentions

A. Complainant

The following is a summary of the main assertions of the Complainant.

General

The DEATH ROW RECORDS Mark is absolutely critical to the Complainant's success and potential growth and the Complainant has expended millions of dollars advertising, promoting, developing and protecting the DEATH ROW RECORDS Mark.

As a result of long, continuous and extensive use, advertising and promotion of the DEATH ROW RECORDS Mark, and the commercial success of DEATH ROW RECORDS branded goods and services, the DEATH ROW RECORDS Mark has developed an enviable cachet, image and reputation in the music industry.

The Respondent registered the Domain Name over three decades after the Complainant's predecessor-in-interest, began using the DEATH ROW RECORDS Mark.

The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Respondent has been utilizing the similarity of the Domain Name to the Complainant's <deathrowofficial.com> domain name, the website at which offers and advertises the Complainant's goods and services.

The Respondent is attempting to mislead consumers into believing that the Respondent is related to or affiliated with the Complainant, or that it is authorized to use the DEATH ROW RECORDS Mark, when it is not.

The Domain Name is clearly similar in appearance, sound, connotation and commercial impression to the DEATH ROW RECORDS Mark. It incorporates the entire DEATH ROW RECORDS trademark with the addition of the generic Top-Level Domain ("gTLD") ".shop" and the term "merch." The addition of ".shop" is an insignificant addition which does not remove the likelihood of confusion between trademark and Domain Name, and simply indicates that the Domain Name is registered in the ".shop" gTLD. The word "merch" is a term that is short for "merchandise" and does not eliminate the confusing similarity between the Domain Name and DEATH ROW RECORDS Mark. In the circumstances, it may be inferred that the Domain Name is calculated to confuse or deceive, as it falsely suggests an association with the Complainant.

The Respondent has no rights or legitimate interests in respect of the Domain Name

There is no evidence or circumstances known to the Complainant that would give rise to any rights or legitimate interests for the Respondent. There is no evidence that the Respondent uses the Domain Name in connection with a bona fide offering of goods or services, and there is no evidence that the Respondent has been commonly known by the Domain Name.

At the time the Respondent registered the Domain Name, the DEATH ROW RECORDS Mark was well-known within the music industry and among consumers throughout the United States and around the world. The Respondent has not received any license or consent from the Complainant, express or implied, to use the DEATH ROW RECORDS Mark in a domain name or in any other manner, and nor has the Complainant acquiesced in any way to such use.

Use of a domain name that incorporates a well-known trademark to direct visitors to a website unconnected with the trademark owner cannot constitute use in connection with a bona fide offering of goods and services, or otherwise be considered to constitute a legitimate interest in a domain name.

The DEATH ROW RECORDS Mark is prominently displayed on the homepage of the Respondent's website. The Domain Name is being used by the Respondent in an attempt to pass itself off as the Complainant, offering for sale on its website counterfeit DEATH ROW RECORDS products.

The Respondent has sought to take advantage of the Complainant's goodwill and the goodwill of the DEATH ROW RECORDS Mark. It is impossible to conceive of circumstances in which the Respondent could legitimately use the Domain Name without creating a false impression of association with the Complainant.

The circumstances described above also support a finding of bad faith.

The Domain Name was registered and is being used in bad faith.

The Respondent's website is being maintained without the Complainant's authorization.

Due to the distinctive nature of the DEATH ROW RECORDS Mark and the widespread popularity of the DEATH ROW RECORDS Mark in the 1990s, the Respondent is likely to have had notice of its existence at the time of registration of the Domain Name.

The Domain Name is used by the Respondent in an attempt to pass itself off as the Complainant, offering for sale at its website counterfeit DEATH ROW RECORDS products. There also appears on the Respondent's website a number of false statements (described earlier) intended to deceive consumers into believing that the Respondent is selling authentic DEATH ROW RECORDS merchandise.

It may be inferred that the Respondent has registered the Domain Name to purposefully disrupt the business of the Complainant and to create a likelihood of confusion with the DEATH ROW RECORDS Mark.

Registration of a domain name containing a well-known trademark by a person with no connection to that trademark amounts to "opportunistic bad faith".

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires a complainant to prove: (i) that a respondent has registered a domain name which is identical or confusingly similar to a trademark or service mark in which a complainant has rights; (ii) that the respondent has no rights or legitimate interests in respect of the domain name; (iii) that the domain name has been registered and is being used in bad faith. A complainant must prove each of these three elements to succeed.

A. Identical or Confusingly Similar

The Complainant is the owner of the DEATH ROW RECORDS Mark and thus clearly has rights for the purposes of the Policy.

Ignoring the gTLD ".shop" for the moment (as the Panel may do for comparison purposes), the Domain Name comprises the DEATH ROW RECORDS Mark followed by the word "merch". Accordingly, the DEATH ROW RECORDS Mark and Domain Name are not identical and thus the issue of confusing similarity must be considered. Application of the confusing similarity test under the UDRP typically involves "a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name." (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Section 1.7 of the [WIPO Overview 3.0](#) goes on to provide "[...] in cases where a domain name incorporates the entirety of a trademark, [...] the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The DEATH ROW RECORDS Mark is incorporated in its entirety within the Domain Name. It is clearly recognizable within the Domain Name. The addition of the term "merch" does not prevent a finding of confusing similarity.

The Panel finds that the Domain Name is confusingly similar to the DEATH ROW RECORDS Mark for the purposes of the Policy and thus paragraph 4(a)(i) of the Policy has been established.

B. Rights or Legitimate Interests

By its allegations, the Complainant has made out a prima facie case that the Respondent lacks rights or legitimate interests in the Domain Name. Accordingly, the burden of production shifts to the Respondent to come forward with arguments or evidence demonstrating that it does in fact have such rights or legitimate interests. The Respondent has not done so and accordingly, the Complainant is deemed to have satisfied the second element. Despite the lack of any answer to the Complaint, however, the Panel is entitled to consider whether there would be anything inappropriate in such a finding.

A respondent can show it has rights or legitimate interests in a domain name in various ways even where, as is the case here, it is not licensed by or affiliated with a complainant. For instance, it can show that it has been commonly known by the domain name or that it 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. Section 2.1 of the [WIPO Overview 3.0](#).

The Respondent here is not commonly known by the Domain Name. Further, the Domain Name has been used to direct Internet users to the Respondent's web shop purportedly selling counterfeit DEATH ROW RECORDS products and on which is displayed the DEATH ROW RECORDS Mark together with a number of false statements intended to deceive Internet users into believing that the Respondent is selling authentic DEATH ROW RECORDS merchandise.

In these circumstances, it would be difficult to conclude that there is anything noncommercial or fair about the Respondent's use. As to an absence of an intent to mislead (for commercial gain), the Respondent's choice of Domain Name, the dominant element being the Complainant's DEATH ROW RECORDS Mark, with the addition of the descriptive word "merch", suggests the opposite, as does the Respondent's choice of gTLD ".shop" reflecting the very nature of the Respondent's misleading enterprise.

A respondent can also show that it is using a domain name in connection with a bona fide offering of goods or services. However, it seems clear that the Respondent set out to acquire a domain name that would create a misleading impression of association with the Complainant, which has then been used to resolve to a web shop containing misleading statements and advertising for sale counterfeit products. These circumstances cannot amount to a bona fide offering of goods or services for the purposes of the Policy.

The Respondent has sought to create an impression of association with the Complainant and has chosen not to attempt to justify its actions. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, impersonation/passing off, or fraud) can never confer rights or legitimate interests on a respondent. Section 2.13 of the [WIPO Overview 3.0](#).

The Panel finds that the Complainant has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of non-exclusive scenarios which may evidence a respondent's bad faith. They include, for instance, a respondent registering a domain name in order to prevent an owner of the trademark or service mark to which it is said to be confusingly similar or identical, from reflecting the mark in question in a corresponding domain name (provided that the respondent has engaged in a pattern of such conduct). A respondent registering a domain name primarily for the purposes of disrupting the business of a competitor is another scenario, as is a respondent intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or of products or services on it.

If circumstances are such as to indicate that a respondent has registered or acquired the domain name primarily for the purposes of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark (or to a competitor of that complainant) for valuable consideration in excess of out-of-pocket costs directly related to the domain name, that too can be indicative of registration and use of a domain name in bad faith.

A complainant does not have to demonstrate a precise literal application of one of the paragraph 4(b) Policy scenarios. They are non-exclusive and illustrative only, and as long as there is evidence demonstrating that a respondent is seeking to take unfair advantage of, or to abuse a complainant's trademark, such behaviour would satisfy the general principle underlying the bad faith requirement of the Policy.

The Complainant has put forward various arguments to support its contention of bad faith, some or all of which would constitute or support a finding of bad faith under the Policy. Given the worldwide reputation of the Complainant and its well-known DEATH ROW RECORDS Mark, and the use to which the Domain Name has been put, it is clear that the Respondent was aware of the existence of the Complainant and its DEATH ROW RECORDS Mark at the time of registration of the Domain Name. The Respondent's use of the Domain Name to resolve to a misleading web shop demonstrates a clear intention to mislead Internet users for commercial gain. In terms of paragraph 4(b) of the Policy, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or of products or services on it. More generally, it seems very likely that the Respondent's primary motive in registering and using the Domain Name was to capitalize on or otherwise take advantage of the Complainant's trademark rights, which also leads to a finding of bad faith.

In all the circumstances, the Panel finds that, for the purposes of the Policy, there is evidence of both registration and use of the Domain Name in bad faith under the paragraph 4(a)(iii) of the Policy.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <deathrowrecordsmerch.shop> be transferred to the Complainant.

/Jon Lang/

Jon Lang

Sole Panelist

Date: September 6, 2024