

ADMINISTRATIVE PANEL DECISION

The Authors Guild v. JamesMartin, ImplicitPress
Case No. D2024-5195

1. The Parties

The Complainant is The Authors Guild, United States of America, represented by Mitchell, Silberberg & Knupp, LLP, United States of America (the “United States”).

The Respondent is JamesMartin, ImplicitPress, Philippines.

2. The Domain Name and Registrar

The disputed domain name <authorsguildliterary.com> (the “Disputed Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 17, 2024. On December 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 19, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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 January 6, 2025. In accordance with the Rules, paragraph 5, the due date for Response was January 26, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 27, 2025.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on February 5, 2025. 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

Founded in 1912, the Complainant is a non-profit association of professional, published writers of all genres including historians, biographers, academicians, journalists, and other writers of nonfiction and fiction. The Complainant is based in the United States with almost 15,000 members.

The Complainant owns the United States Trademark Registration No. 7078020 for AUTHORS GUILD in Classes 35 and 41 registered on June 13, 2023 (the "Complainant's Trademark"). The Complainant's Trademark is also fully incorporated in the Complainant's domain name <authorsguild.com>, which redirects to the <authorsguild.org> and resolves to the Complainant's website (the "Complainant's Website").

The Disputed Domain Name was registered on July 28, 2024, around a year after the Complainant registered the Complainant's Trademark. At the time of filing of the Complaint, the Disputed Domain Name purportedly resolved to a website (the "Respondent's Website") that displayed the Complainant's Trademark and provided support services in relation to "manuscript development" and "publishing negotiations", offered "personalized representation" and "strategic guidance" to authors. At the time of rendering of this Decision, the Panel notes that the Disputed Domain Name resolves to a parking page that displays the message "Congratulations! Your custom domain "www.authorsguildliterary.com" is now connected to your site. To activate it, please choose one of our premium packages which will allow you to enjoy the full benefits of your custom domain."

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that:

(a) The Disputed Domain Name is confusingly similar to the Complainant's Trademark. The Complainant's Trademark is reproduced in its entirety in the Disputed Domain Name. The addition of the descriptive term "literary" in the Disputed Domain Name should not prevent a finding of confusing similarity.

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent is not a licensee of the Complainant, and the Respondent has not obtained permission, either express or implied, from the Complainant to use the Complainant's Trademark as part of a domain name or otherwise. Moreover, there is no evidence showing that the Respondent uses the Disputed Domain Name in connection with a bona fide offering of goods and services, or for legitimate noncommercial or fair use. The Respondent registered and used the Disputed Domain Name to mislead Internet users interested in the Complainant's services and to divert them to the Respondent's Website for its own commercial gain. The Disputed Domain Name appears to be registered by the Respondent to create a likelihood of confusion with the Complainant's Trademark to mislead Internet users into believing the Disputed Domain Name is associated with or endorsed by the Complainant.

(c) The Respondent has registered the Disputed Domain Name and is using it in bad faith. The Respondent cannot assert that it was unaware of the Complainant's rights in the Complainant's Trademark when registering the Disputed Domain Name as the Disputed Domain Name fully incorporates the Complainant's Trademark and purports to offer competing services for authors. Given the goodwill and reputation that the Complainant has acquired in the Complainant's Trademark, the Respondent registered the Disputed Domain Name with the intent to capitalize on the Complainant's goodwill and reputation. Furthermore, the Respondent is aware of the Complainant's rights in the Complainant's Trademark based on the fact that the Complainant sent the Respondent two demand letters on September 5, 2024 and October 9, 2024 respectively. The Respondent used the Disputed Domain Name to solicit funds from unsuspecting

authors by giving promises to them regarding publication of their works and financial returns in exchange for the authors' payment of an upfront fee. The Respondent intentionally used the Disputed Domain Name to attract, for commercial gain, Internet users to the Respondent's Website by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's Website and services. Moreover, the fact that the Respondent's Website prominently features the Complainant's Trademark and purportedly offers services identical to those offered by the Complainant is further evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves 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 has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's Trademark is reproduced within the Disputed Domain Name. Furthermore, it is well established that the generic Top-Level Domain (gTLD), ".com" in this case, may be disregarded for the purposes of assessing confusing similarity under the first element. See section 1.11.1 of the [WIPO Overview 3.0](#). Accordingly, the Disputed Domain Name is confusingly similar to the Complainant's Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term here, "literary", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a Disputed Domain Name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

In the present case, the Respondent did not submit a Response. The fact that the Respondent did not submit a Response does not automatically result in a decision in favor of the Complainant. However, the Respondent’s failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

The Panel notes that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become commonly known by the Disputed Domain Name. There is also no evidence to suggest that the Respondent’s use of, or demonstrable preparation to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a bona fide offering of goods or services or constitutes legitimate noncommercial or fair use. The composition of the Disputed Domain Name, consisting of the Complainant’s Trademark together with the term “literary”, also leads to a risk of implied affiliation as the Disputed Domain Name effectively suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1. The Respondent would likely not have adopted the Complainant’s Trademark if not for the purpose of creating an impression that the Disputed Domain Name is associated with, or originates from, the Complainant, especially when the Disputed Domain Name reproduces the Complainant’s Trademark in its entirety and had purportedly offered services similar to those of the Complainant and displayed the Complainant’s Trademark on the Respondent’s Website.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that it is difficult to conceive of any plausible use of the Disputed Domain Name by the unaffiliated Respondent that would amount to good faith use, given that the Disputed Domain Name reproduces the Complainant’s Trademark in its entirety together with the descriptive term “literary”, and the Respondent purportedly featured the Complainant’s Trademark on the Respondent’s Website and offered services similar (if not identical) to that of the Complainant. The Respondent must have been aware of the Complainant’s business and trademark when registering and using the Disputed Domain Name. The Respondent also registered and used the Disputed Domain Name to mislead and divert Internet users to the Respondent’s Website for commercial gain by creating a likelihood of confusion with the Complainant’s Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s Website. See paragraph 4(b)(vi) of the Policy and section 3.1 of the WPO Overview 3.0. Further, the Respondent failed to respond to the Complainant’s contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

The Complainant has provided evidence of fraud, where writers were deceived with false promises of publication and financial returns in exchange for upfront fees. Panels have held that the use of a domain name for illegal activity here, claimed phishing and impersonation, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel further notes that the Disputed Domain Name now resolves to a parking webpage. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the current non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the reputation of the Complainant's Trademark, the composition of the Disputed Domain Name, and the Respondent's failure to respond to the Complainant's contentions and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 Name <authorsguildliterary.com> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: February 20, 2025