

## **ADMINISTRATIVE PANEL DECISION**

Kapsten, LLC v. Vicky Townsend, Divorce Right, Inc  
Case No. D2025-1096

### **1. The Parties**

Complainant is Kapsten, LLC, United States of America (“United States”), represented by Fredrikson & Byron, P.A., United States.

Respondent is Vicky Townsend, Divorce Right, Inc, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <fairwell.com> (the “Domain Name”) is registered with Network Solutions, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 17, 2025. On March 18, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, 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 and contact information in the Complaint. The Center sent an email to Complainant on March 19, 2025, providing the registrant and contact information disclosed by the Registrar, and requesting that Complainant submit an amendment to the Complaint. Complainant filed an amended Complaint on March 20, 2025.

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 Respondent of the Complaint, and the proceedings commenced on March 21, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2025. Respondent sent email communications to the Center on March 21, 2025.

The Center appointed Robert A. Badgley as the sole panelist in this matter on April 14, 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.

On April 25, 2025, the Panel issued Procedural Order No. 1, which stated in part:

The Panel notes that the Whois records of the <fairwell.com> (“Disputed Domain Name”) was registered on July 4, 2001. The Panel further notes that the Complainant claims “Respondent did not register the FAIRWELL.com domain until August 21, 2024” in its Complaint.

In view of the above, pursuant to paragraphs 10 and 12 of the Rules for Uniform Domain Name Dispute Resolution Policy, the Panel invites:

- the Respondent, by April 30, 2025, to clarify the date she first acquired the Disputed Domain Name, and provide evidence therefor;
- the Complainant to submit its comments by May 5, 2025, in relation to any submissions by the Respondent in response to this Procedural Order.

The Parties’ various responses to Procedural Order No. 1 will be woven into the factual background narrative set forth below.

#### **4. Factual Background**

The Parties have made numerous factual allegations and raised numerous arguments that are not germane to the disposition of this dispute under the UDRP, which is the only lens through which the Panel is looking at this case. As such, the Panel will not take up every factual allegation and every argument raised by the Parties, for reasons that should become clear in the discussion of the merits below.

Complainant is a provider of alternative dispute resolution (“ADR”) services, apparently concentrating in the area of divorce and family law dispute mediation and the provision of software useful in such circumstances.

Complainant holds a registered trademark with the United States Patent and Trademark Office (“USPTO”) for the mark FAIRWELL, USPTO Reg. No. 5,590,912, registered on October 23, 2018, in connection with “alternative dispute resolution, mediation and arbitration services,” and “software for helping people divide assets, resolve disputes, determine obligations and responsibilities, and execute paperwork to facilitate divorce proceedings and formal separations.”

Complainant filed this trademark application on December 20, 2016. The date of first use in commerce reflected on the registration certificate is February 1, 2018.

According to the Complaint:

“Complainant has used the FAIRWELL mark for its divorce-related services since at least as early as February 1, 2018, and currently uses the FAIRWELL mark on its website at ‘www.fairwellmediation.com’.”

Complainant does not provide any evidence of the extent to which its FAIRWELL mark enjoys renown among consumers, either today or at any point in the past.

The Domain Name was first registered on July 4, 2001. It appears that ownership of the Domain Name has changed hands over the years.

As of March 11, 2025, the Domain Name resolved to a website operated by Respondent which offers, among other things, “Divorce Mediation,” “Divorce Form Assistance,” and “Life Coaching.” Respondent’s site features a somewhat stylized version of the FAIRWELL mark which is different from the stylized FAIRWELL mark on Complainant’s own website.

On April 25, 2025, Respondent sent two emails to the Center, providing her response to Procedural Order No. 1. One of these emails stated:

“Please find attached the registration receipts as requested by the Administrative Panel in Procedural Order No. 1, dated April 25, 2025. These documents should serve to clarify the date on which Divorce Right, Inc. first acquired the disputed domain name, [hyperlink redacted], as well as provide supporting evidence. As mentioned in our previous email, the domain was initially with GoDaddy starting in 2001 before its transfer to the current host, Hostinger, in 2024.”

Attached to Respondent’s April 25, 2025 email was an apparent receipt from GoDaddy to a third party, purportedly reflecting an April 14, 2017, transaction on which the third party paid USD 5,283.72 for the Domain Name, comprised of USD 14.99 annual registration fee, USD 5,199.00 as a one-time fee to purchase a “premium” domain name, and additional sums for ancillary services and taxes. Although this “receipt” mentions GoDaddy, the invoice appears rather rudimentary in its graphics. Neither Respondent (Vicky Townsend) nor her company is mentioned on this receipt, and Respondent did not at this point explain who the third party is and what Respondent’s relationship with the third party is.

On May 5, 2025, Complainant sent the Center its reply to Respondent’s response to Procedural Order No. 1. Complainant noted, among other things, that Respondent did not respond properly to the procedural order, inasmuch as she failed to prove when she first acquired the Domain Name. The supposed April 14, 2017, transaction, Complainant asserted, demonstrated that Respondent did not own the Domain Name at that point.

Later on May 5, 2025, Respondent replied to Complainant’s submission. Respondent stated, among other things, that the Domain name “was originally registered by [a third party] in 2017.” According to Respondent, the third party granted Respondent permission to use the domain and associated “Fairwell” trademark, and that Respondent and the third party “have a mutually agreed plan for Respondent to purchase both the domain name and the trademark by June 2025.”

According to Respondent:

“Respondent has made and continues to make preparations to use the domain in connection with a legitimate business venture unrelated to the Complainant’s offerings. Respondent’s intended use is under the guidance and cooperation of the prior registrant.”

Respondent’s May 5, 2025, email to the Center also stated:

“Further, the Complainant’s trademark rights, while federally registered in 2016, do not automatically nullify all other legitimate uses or interests in the term “Fairwell”—particularly where prior registration and ongoing use by a third party predate or coincide with the Complainant’s mark.”

Respondent submitted to the Center a pair of documents, signed in two places by the third party but not by Respondent, purporting to reflect the third party’s rights in the Domain Name and her registered trademark FAIRWELL – identified by its specific United States Patent and Trademark Office (“USPTO”) Serial Number – and the third party’s grant of permission to Respondent to use that mark and that Domain Name and eventually purchase same.

(As this was the first time the existence of a second FAIRWELL trademark was introduced into the record, the Panel conducted limited research on the USPTO website to confirm that the USPTO Serial Number referred to in the alleged contract corresponded to an actual USPTO trademark. In fact, the third party holds

a live trademark, registered on June 9, 2020, for the trademark FAIRWELL in connection with, among other things, “life coaching services in the field of divorce.”)

On May 9, 2025, Complainant sent a further response to the Center, stating among other things that it could not open in readable format the purported contract documents relied upon by Respondent in her May 5, 2025, email to the Center. A readable version was sent to Complainant on May 14, 2025.

On May 16, 2025, Complainant sent another response to the Center, addressing the alleged contract between the third party and Respondent. Complainant raised a number of points, some of which do not merit attention here. With respect to the purported contract between the third party and Respondent, Complainant argued that its trademark is senior to the third party’s and that the services offered by both parties overlap significantly.

In its May 16, 2025, submission, Complainant revealed that it had been aware of the third party’s trademark application and even filed an opposition with the USPTO. Complainant stated:

“Complainant opposed [third party’s] application for FAIRWELL based on Complainant’s prior federal registration for FAIRWELL, and [the third party] narrowed her application by the Excluded Services in order to settle Complainant’s opposition. [...] Therefore, [third party’s] registration for FAIRWELL is junior to Complainant’s in all respects, [third party] was fully aware her rights to FAIRWELL excluded the Excluded Services, and therefore she could not have granted Respondent rights beyond the Life Coaching Services set forth in her federal trademark registration, and affirmatively excluded the Excluded Services from Respondent.”

## **5. Parties’ Contentions**

### **A. Complainant**

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

### **B. Respondent**

Respondent’s essential position is reflected in the statements and annexes discussed above in the “Factual Background” section.

## **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;
- (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 Panel finds that Complainant has rights in the mark FAIRWELL through registration demonstrated in the record. The Panel also finds that the Domain Name is identical to that mark.

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 you [Respondent] of the dispute, your 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) you [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) you [Respondent] are 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 need not address this element, given its conclusion below on the “Bad Faith” element.

## **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 that 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.

On this record, especially as supplemented in response to Procedural Order No. 1, the Panel concludes that Complainant has failed to carry its burden of proving, on a balance of probabilities, that Respondent more likely than not registered and used the Domain Name in bad faith within the meaning of the Policy.

The UDRP is designed chiefly to address clear cases of cybersquatting. The elements of a UDRP claim are not entirely coextensive with those of a trademark infringement claim or unfair competition claim. Further, UDRP panels are not well equipped to sift through numerous arguments and competing pieces of evidence, many of which require a discovery process, witness testimony and cross-examination, and so forth.

The Panel here simply cannot conclude that there is sufficient evidence of Respondent targeting Complainant’s FAIRWELL mark. Complainant’s strongest point is that Respondent’s services overlap substantially with Complainant’s services. Even so, the Panel is unwilling to conclude from this fact that Respondent was aware of Complainant’s FAIRWELL mark when she acquired the Domain Name (apparently from the third party).

The mark FAIRWELL is comprised of the words “fair” and “well,” and it is a play on the word “farewell.” As the latter word means “goodbye,” an apt term in a divorce setting, and as mediation services purport to provide a “fair” resolution to a dispute, it is easy enough to see multiple parties coming up with the mark FAIRWELL in connection with these services. Further, it does not appear from the record that actual

confusion has occurred between Complainant's trademark and the disputed domain name. The Panel notes again that Complainant did not provide any evidence of how extensive its mark is renowned among consumers. Such evidence is often quite useful to sustain a claim under the UDRP that a respondent probably had the complainant's trademark in mind when registering the disputed domain name.

Somewhat relatedly, Complainant, based in Minnesota, did not provide evidence of how geographically extensive its actual operations are, and how extensive its advertising of the mark is. Respondent is based in Florida, more than a thousand miles from Complainant.

These latter considerations matter little in the context of a trademark infringement lawsuit in the United States under the Lanham Act, given the fact that USPTO registered trademarks enjoy nationwide validity and impart nationwide notice of the mark's existence. Again, though, United States trademark law is not entirely coextensive with the requirements of a successful UDRP claim. In the latter setting, a respondent's having targeted the complainant's trademark is essential. In this case, many of Complainant's arguments, especially about trademark seniority and the like, while potentially relevant to show bad faith targeting under the Policy, also to some extent conflate the elements of a UDRP claim and a trademark infringement claim which has a different multi-factor analysis. Whether Complainant may have a viable Lanham Act cause of action against Respondent is beyond the remit of this Panel to say.

In sum, this dispute is not a good fit for disposition under the Policy, and Complainant has failed to provide a sufficient basis on which the Panel could unequivocally conclude that Respondent engaged in bad faith registration and use here. The Complaint fails.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: June 2, 2025