

## **ADMINISTRATIVE PANEL DECISION**

**Delfont Mackintosh Theatres Limited v. Lexuqinoiko qinoiko, PT ANGIN RIBUT**

**Case No. D2025-1725**

### **1. The Parties**

The Complainant is Delfont Mackintosh Theatres Limited, United Kingdom ("UK"), represented by Boulton Wade Tennant LLP, UK.

The Respondent is Lexuqinoiko qinoiko, PT ANGIN RIBUT, Indonesia.

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

The disputed domain name <novellotheatre.com> 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 April 29, 2025. On April 30, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 30, 2025, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 6, 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 the Respondent of the Complaint, and the proceedings commenced on May 8, 2025. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 30, 2025.

The Center appointed Mihaela Maravela as the sole panelist in this matter on June 6, 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**

According to information in the Complaint, the Complainant is a private limited company organised under the laws of England and Wales. It operates eight of the most prestigious theatres in London's West End, including the "Novello Theatre". The theatre originally opened in 1905 as the "Waldorf Theatre" and was renamed to the "Strand Theatre" in 1913. In 2005, the theatre was renamed to the "Novello Theatre", in honour of Ivor Novello, the Welsh actor, dramatist, singer and composer, who was one of the most popular British entertainers of the first half of the 20th century.

The first production performed at the newly named Novello Theatre in 2005 was a production by the Royal Shakespeare Company. Then, in 2009, Debbie Allen's production of *Cat on a Hot Tin Roof* transferred from Broadway to the Novello Theatre, followed by the musical comedy *Betty Blue Eyes* in 2011, which was adapted from Alan Bennett's screenplay for the film, *A Private Function*. In 2012, *MAMMA MIA!* transferred from the Prince of Wales Theatre, where it has been playing ever since. There have now been more than 8,000 performances, with the production having been seen by over 9 million people.

In May 2005, the Complainant had already announced that the "Strand Theatre" was to close for refurbishment, and that the Theatre was to reopen under the new name, the "Novello Theatre", in well-known publications with substantial readership, such as *The Evening Standard* and *The Guardian*, as well as publications specialising in theatre news, such as *Playbill* and *Broadway World*. In this respect, the Complainant proved there were many press releases, including in the online environment, that took place in May 2005, days before the registration of the disputed domain name, announcing the new name of the theatre, namely "Novello Theatre".

The Complainant has registered rights in the trademark NOVELLO THEATRE, including the UK trademark for registered under number UK00002408683 as of December 29, 2006, for goods and services in classes 9, 16, 25, and 41.

The disputed domain name was registered on May 27, 2005, and was used to point to various Indonesian websites which purport to be online gambling websites. At the date of the Decision, the disputed domain name no longer resolves to an active website.

No information is available on the Respondent apart from the data revealed by the Registrar.

#### **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 it has both registered and unregistered trademark rights, and that the latter pre-dates the registration date of the disputed domain name. In this respect, it argues that before the registration date of the disputed domain name, the Complainant had already announced that it will be renaming its theatre to the "Novello Theatre", and therefore had unregistered trademark rights in NOVELLO THEATRE pre-dating the May 28, 2005, through this pre-launch publicity. Further, the Complainant argues that the disputed domain name is identical to its trademark.

As regards the second element, the Complainant argues that the Respondent is not in any way affiliated with the Complainant or otherwise authorised or licensed to use the Complainant's trademark, or to seek registration of any domain name incorporating such trademark. The disputed domain name currently redirects to various Indonesian websites which purport to be online gambling websites. Most of the text on the websites is in Indonesian. The Complainant submits that although gambling services are remote from the theatre services which the Complainant provides under its NOVELLO THEATRE trademark, the use of the identical disputed domain name for gambling services does not qualify as a good faith offering of goods or services for the purposes of the Policy in the circumstances of this case. The Complainant further claims that, as held in previous UDRP decision, the provision of online gambling services of the kind offered through the Respondent's website is illegal under Indonesian law.

With respect to the third element, the Complainant argues that the Respondent registered the disputed domain name within days (at most) of the press reporting that the "Strand Theatre" was to be renamed to the "Novello Theatre", such that it clearly had knowledge of the same. The disputed domain name is identical with the Complainant's trademark which is highly distinctive of, and unique to, the Complainant. Therefore, the Complainant concludes that the disputed domain name was clearly registered to target the Complainant. Also, the use that the Respondent has made of the disputed domain name is not a good faith offering of goods and services.

## **B. Respondent**

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

## **6. Discussion and Findings**

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 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 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 mark NOVELLO THEATRE is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The applicable generic Top-Level Domain (“gTLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such may be disregarded under the first element confusing similarity test. Thus, the Panel disregards the gTLD “.com” for the purposes of the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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.

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.

There is no evidence that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy.

The fact that the disputed domain name resolved to an active website redirecting to gambling websites does not confer in the Panel’s view rights or legitimate interests to the Respondent. Panels have held that the use of a domain name for illegal activity (here, the Complainant contends that gambling activities are illegal in Indonesia, where the Respondent resides, and submits online articles to support its contention) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. The Respondent has not replied to the Complainant’s contentions, claiming any rights or legitimate interests in the disputed domain name.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

Moreover, the composition of the disputed domain name is inherently misleading noting it is identical to the Complainant’s trademark.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. In certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include registration of a domain name further to significant media attention (e.g., in connection with a product launch or prominent event). [WIPO Overview 3.0](#), section 3.8.

The Panel finds that the Complainant succeeded to demonstrate that shortly before the disputed domain name registration there was a significant media attention to its upcoming renovation of its theatre and the changing of its name from the "Strand Theatre" to the "Novello Theatre". The earliest media coverage of such name change as evidenced by the Complainant is dated May 23, 2005, several days before the registration date of the disputed domain name. The Respondent has offered no explanation on the choice of "Novello Theatre" for the disputed domain name days after such public announcement.

By registering the identical disputed domain name, unique to the Complainant, shortly after the change of the name of the Complainant's theater was publicly announced, and by using it in the manner described above, it is clear to the Panel that the Respondent registered the disputed domain name with the Complainant in mind having no intent to use the disputed domain name for any purpose other than trading off the fame of the Complainant and its rights.

As regards the use of the disputed domain name, from the uncontested evidence in the case file, it results that the disputed domain name was used for a website resolving to gambling websites. According to the unrebutted statements of the Complainant, gambling is illegal in Indonesia. Such use of the disputed domain name, which is identical to the Complainant's trademark, is likely to unduly profit from the value of the Complainant's trademark and may result in tarnishing the reputation of the Complainant and its trademarks. In addition, the disputed domain name was registered through the use of a privacy service.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions.

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 <novellotheatre.com> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: June 20, 2025