

ADMINISTRATIVE PANEL DECISION

Magic Men Holdings Pty Ltd v. Wayne R. Ball, Wayne R. Ball
Case No. D2025-3125

1. The Parties

The Complainant is Magic Men Holdings Pty Ltd, Australia, self-represented.

The Respondent is Wayne R. Ball, Wayne R. Ball, United States of America, self-represented.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 6, 2025. On August 6, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 6, 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 (“Registrant of magicmen.com”) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 7, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amended Complaint. The Respondent filed an early Response on August 7, 2025, to which the Complainant responded with an unsolicited Supplemental Filing on August 8, 2025, and filed an amended Complaint.

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 August 8, 2025. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2025. The Response was filed with the Center on August 8, 2025. The Complainant submitted an unsolicited Supplemental Filing on August 11, 2025, to which the Respondent objected on the same day.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on August 26, 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

The Complainant is Australian Company Number 169 376 050, registered in Victoria, Australia, on May 5, 2014. Nothing is known regarding the nature of its business other than that it is the owner of the MAGIC MEN trademark noted below.

The Complainant is the owner of Australian Registered Trademark Number 1557693 in respect of the word mark MAGIC MEN, registered on January 7, 2014, in Class 41 (adult entertainment services and party event management), having effect from the date of filing, being May 17, 2013.

On or about July 24, 2025, the Complainant consulted a domain name broker regarding the possibility of reaching out to the Respondent regarding a possible purchase of the disputed domain name. On August 6, 2025, the broker advised the Complainant that the Respondent had been unresponsive but that it would continue to reach out.

The disputed domain name was registered on April 6, 2002. There is nothing before the Panel to suggest that the Respondent is not the original registrant of the disputed domain name, and the Panel therefore proceeds on that basis. There is no website configured at the disputed domain name, and no historic screenshots entries are available on the Internet Archive "Wayback Machine". The Respondent's position is that it has been personally involved in the magic hobby predating the Complainant's existence for decades, and that it registered the disputed domain name on its original registration date with a plan to use it for a website promoting a small amateur magic act which it shared with a friend, which business never materialized.

The Respondent produces a range of evidence to support its submissions regarding its longstanding magic hobby. First, the Respondent produces a photograph of a briefcase containing magic paraphernalia including a dot matrix printed banner with the word "Illusions" in gothic script, flanked by a top hat, gloves and walking stick design, together with a flyer also headed "Illusions", underneath which is the Respondent's name flanked by the same top hat and gloves design, and a telephone number. The Respondent says that these items were used at various magic shows.

Secondly, the Respondent produces a photograph of three magic newsletters, two of which are dated June 1995, and July 1995, respectively. The Respondent states that these newsletters emanate from the local magic shop near where the Respondent lived.

Thirdly, the Respondent produces a photograph of (1) a flyer for a church picnic dated August 24, 1997, which notes "MAGICIAN (2:00 P.M. TO 2:30 P.M.)", at which the Respondent says that it performed, the obverse of which contains a handwritten list of tricks; and (2) handwritten notes entitled "Parish Picnic 2002", which the Respondent states is its script for another performance at a church picnic in the designated year.

Fourthly, the Respondent produces a photograph of (1) a letter from a magic supplies company dated July 12, 1989 addressed to the Respondent stating that two items were out of stock; (2) a receipt from a magic supplies shop dated January 10, 1995 in respect of an item named "Impossible Opener"; (3) a letter from the Society of American Magicians addressed to "Dear Compeer Ball" dated November 6, 1997, welcoming the Respondent to membership in the said Society; and (4) an associate membership card from the said Society in the Respondent's name with expiration date of 9811, i.e., November 1998.

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 the disputed domain name is identical or confusingly similar to the Complainant's trademark, that the Respondent is not commonly known by "magicmen", that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, that the Respondent has not been authorized by the Complainant to use its trademark, and that, to the best of the Complainant's knowledge, the Respondent is not offering any goods or services through the disputed domain name.

The Complainant goes on to assert that the disputed domain name was registered after the Complainant's trademark was registered, that the disputed domain name is not being used and is being passively held, that the Respondent has not responded to contact attempts or has offered to sell the disputed domain name for an excessive price, and that the Respondent appears to have registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the trademark owner or a competitor for valuable consideration.

The Complainant asserts that passive holding of a domain name with a strong, distinctive trademark has been recognized as bad faith in previous decisions under the Policy.

B. Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent asserts that it has owned the disputed domain name continuously since April 6, 2002, and that it registered the disputed domain name in connection with a small amateur magic act it shared with a friend, intending to create a website to promote their performances. The Respondent states that it has maintained ownership of the disputed domain name for 23 years without ever attempting to sell it to the Complainant or to target the Complainant's business, adding that the Complainant's business was incorporated in 2018, more than 16 years after the Respondent registered the disputed domain name, and that the Complainant does not appear to own a trademark in the United States of America.

The Respondent submits that its ownership of the disputed domain name is directly tied to its personal involvement in the magic hobby, adding that it has provided dated proof of this demonstrating a bona fide and longstanding interest in magic that explains the choice of the disputed domain name and establishes its legitimate interest therein under the Policy.

The Respondent points out that bad faith under the Policy must be present at the time of registration, adding that it is not possible for it to have registered the disputed domain name to target a mark or business that did not then exist. With regard to the Complainant's submissions on passive holding, the Respondent points out that passive holding alone, when the original registration was legitimate, is not bad faith, adding that it has never used the disputed domain name to mislead, confuse or divert Internet users.

C. Complainant's first supplemental filing

The Complainant contends that the Respondent has provided no evidence of the alleged magic act, and there is no archived website content from 2002 to the present. The Complainant notes that historical Internet archives show that no content has been hosted at the disputed domain name relating to any magic act or other bona fide offering of goods or services, adding that the complete absence of any legitimate use over two decades undermines any claim of bona fide interest. The Complainant adds that unsupported assertions of intended use, without demonstrable preparations or evidence, do not establish rights or legitimate interests under the Policy.

The Complainant submits that passive holding may constitute bad faith use where the disputed domain name is identical to a distinctive mark and blocks the mark owner from registering it. The Complainant asserts that its mark MAGIC MEN is distinctive and has achieved substantial reputation in the entertainment industry (evidence not provided), that the Respondent has been aware of the Complainant's rights since receiving the Complainant's contact attempts but has refused to relinquish the disputed domain name, and that the Respondent's only activity has been the passive holding of the disputed domain name. The Complainant adds that a search for the Respondent's name with "magic" or "magic men" on Google (each searched as a phrase) does not return any results.

D. Respondent's reply to Complainant's supplemental filing (contained in the Response)

The Respondent contends that its documentary annexes contain clear and dated documentation of its magic hobby from decades before the Complainant existed, adding that the fact that the disputed domain name has not hosted an active website does not negate legitimate interest, especially for a personal hobby domain name registered before the Complainant's rights arose, that the absence of indexed Google search results is irrelevant, as the Policy recognizes legitimate interests arising from personal or preparatory use absent such indexing. Regarding its alleged awareness of the Complainant, the Respondent submits that any awareness occurred long after registration of the disputed domain name, adding that continued ownership without targeting does not constitute bad faith.

E. Complainant's second supplemental filing

The Complainant asserts that none of the Respondent's evidence shows a link to the name "magicmen", adding that there is no evidence that the Respondent performed under such name, or otherwise associated his hobby with the disputed domain name, adding that without a direct nexus between the hobby and the disputed domain name, the materials produced are irrelevant.

The Complainant submits that the Respondent has provided no proof of website development, hosting arrangements, logo design, promotional content, or other preparations linked to the disputed domain name, adding that memorabilia from performances decades before the disputed domain name was registered are insufficient to satisfy the requirements of the Policy.

The Complainant concludes that prolonged inactivity "of this magnitude" contradicts any assertion of ongoing bona fide use and weighs heavily against a claim of legitimate interest.

6. Discussion and Findings

6.1 Procedural Issue: Complainant's Supplemental Filing

Paragraph 12 of the Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 4.6.

Panels have sole discretion, under paragraphs 10 and 12 of the Rules, whether to accept an unsolicited supplemental filing from either party, bearing in mind the need for procedural efficiency, and the obligation to treat each party with equality and ensure that each party has a fair opportunity to present its case. The party submitting a supplemental filing would normally need to show its relevance to the case and explain why it was unable to provide that information in the complaint or response (for example, owing to some exceptional circumstance).

The Complainant filed two unsolicited supplemental filings, one on or about August 8, 2025, and one on or about August 11, 2025. The reason for the first unsolicited supplemental filing was largely to address a "preview" of the Respondent's arguments, supplied by the Respondent on August 7, 2025, that would ultimately be repeated in the Response. The second such filing was to address the Response itself.

In the present case, the Panel is content to admit the Complainant's supplemental filings on the basis that each of these responded to matters in the Respondent's "preview" filing, and the Response itself, which matters the Complainant would not necessarily have been able to anticipate in the Complaint. The Panel therefore admits the Complainant's supplemental filings.

The Panel notes that the Respondent objected to the Complainant being allowed to file what amounted to a rebuttal to the Response on the basis that such additional submissions are permitted only with Panel approval or at the Panel's request, although no such request had been made. The Respondent went on to request permission to file a brief sur-reply to address the Complainant's submissions if they were to be admitted by the Panel. In light of the Panel's disposal of the case in the Respondent's favor, on the basis of the pleadings as they stand, the Panel considers it unnecessary to invite the Respondent to file a sur-reply.

6.2 Substantive issues

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 Complainant's trademark does not predate the registration of the disputed domain name, but this is not a requirement of the first element of the Policy. [WIPO Overview 3.0](#), section 1.1.2. However, this may be relevant to the analysis of the second and/or third elements of the Policy.

The entirety of the mark 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 generic Top-Level Domain of the disputed domain name may be disregarded for the purposes of comparison with the Complainant's mark, as is customary in cases under the Policy. [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

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel's findings in connection with the third element assessment under the Policy, no good purpose would be served by addressing the issue of the Respondent's rights or legitimate interests in the disputed domain name.

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 the Respondent has an interest in magic and asserts that it has been the sole registrant of the disputed domain name since its registration date in 2002. Despite the Complainant's various objections, the Respondent's evidence is more than plausible regarding its contention that it had an interest in magic and that the disputed domain name (effectively consisting of the dictionary words "magic" and "men") was registered in furtherance of the same. It is not necessary in the circumstances of this particular case for the Respondent to establish that it has actually used the disputed

domain name in connection with its hobby, such as is contended by the Complainant when it calls for the provision of specific evidence of the Respondent's use of the name "magicmen" or "Magic Men" in connection with its proposed magic act.

The Panel is satisfied on the evidence before it that it is reasonable to infer that the disputed domain name was registered by the Respondent in 2002. The Complainant has produced nothing to displace that inference, such as for example, evidence of third-party use by way of the Internet Archive "Wayback Machine" (there being no corresponding records) or historic Whois entries from the various services that collate these. The Complainant was not incorporated until 2014, and its trademark, even if taken from the effective date, dates from 2013.

Panels under the Policy usually do not make a finding of registration in bad faith if the domain name concerned is registered or acquired by the respondent before the complainant's trademark rights accrue. [WIPO Overview 3.0](#), section 3.8.1. As noted above, there is no evidence before the Panel tending to suggest that the Respondent acquired the disputed domain name after the Complainant's trademark rights came into being, and indeed the Panel makes the reasonable inference to the contrary. None of the exceptional scenarios relating to domain names registered in anticipation of trademark rights (such as, for example, any nascent trademark rights of the Complainant at the material time) are applicable here. [WIPO Overview 3.0](#), section 3.8.2.

The lack of registration in bad faith due to such registration predating the accrual of the Complainant's rights renders the question of use in bad faith moot due to the conjunctive requirement in paragraph 4(a)(iii) of the Policy. However, for completeness, the Panel notes that it does not consider that the Complainant could have made out a case of bad faith arising from passive holding in the circumstances of this case. While 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, (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.

Taking these factors in turn, the Complainant has produced no evidence regarding the degree of distinctiveness or reputation of its mark, despite making conclusory allegations to this effect. The Respondent has submitted a Response in this case and has provided evidence of actual or contemplated good faith use which the Panel accepts. Although the Respondent used a privacy service for its registration data, it did not actively attempt to conceal its identity, for example, by providing false information to the Registrar underlying the privacy service data. Finally, as noted above, the Respondent's contemplated good faith use is entirely plausible as far as the Panel is concerned.

In all of the circumstances of this case, the Panel finds that the Complainant has failed to establish that the disputed domain name was registered in bad faith, and the Complaint fails.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16. In the present case, the registration date of the disputed domain name long predates the establishment of the Complainant's rights, and also the establishment of the Complainant itself. There was no evidence that the Respondent acquired the disputed domain name after the Complainant's rights accrued. The Complainant therefore knew or should have known that it could not succeed in demonstrating that the disputed domain name was registered in bad faith, given that the Respondent could have had no knowledge of it or its rights at the material date. The Complainant put forward no facts or circumstances suggesting that any recognized exception to the general rule regarding predating domain names should apply (see

[WIPO Overview 3.0](#), section 3.8.2). In these circumstances, the Panel finds that the Complainant ignored established Policy precedent, for example, as set out on this topic in section 3.8 of the [WIPO Overview 3.0](#).

The Respondent has been put to the time and trouble of preparing a full Response under the Policy together with having to gather together what amounts to a remarkable collection of evidence dating from the late 1990s, in a case that should never have been brought under the Policy.

The Panel therefore finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: September 9, 2025