

ADMINISTRATIVE PANEL DECISION

Cybernet Entertainment LLC v. Christopher Wake
Case No. DAI2023-0004

1. The Parties

The Complainant is Cybernet Entertainment LLC, United States of America (“United States”), represented by Law Offices of Seth W. Wiener, United States.

The Respondent is Christopher Wake, United States, self-represented.

2. The Domain Name and Registrar

The disputed domain name <kink.ai> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 10, 2023. On March 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 13, 2023, 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 (Withheld for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 14, 2023 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 amendment to the Complaint on March 14, 2023.

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 March 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2023.

Further to the automatic response extension, the Response was filed with the Center on April 8, 2023.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on April 19, 2023. 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 a limited liability company organized under the law of the State of New York, United States, and headquartered in San Francisco, California, United States. The Complainant holds United States Trademark Registration Number 4996416 (registered July 12, 2016) for KINK as a standard character mark “for entertainment and education services, namely providing a website featuring photographic, audio, video, and prose presentations, educational workshops, seminars and tutorial sessions, and nondownloadable videos, all of the foregoing in the field of adult entertainment”.

The Complaint does not further describe the Complainant’s business or the use of its KINK mark. The Complaint attached limited evidence in support of the Complainant’s case.

According to the Whols, the disputed domain name was created on December 16, 2017 and was registered in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Christopher Wake, an individual listing no organization and showing a postal address in the State of California, United States, with a Gmail contact email address.

The disputed domain name resolves to a landing page advertising the disputed domain name for sale through Grit Brokerage. The Panel notes that screenshots available from the Internet Archive’s Wayback Machine show no other use of the disputed domain name. The same landing page appears from December 2021 onward.

The Complainant states that on February 6, 2023, the Respondent offered to sell the disputed domain name to the Complainant for USD 19,000. The Respondent states that this was the price recommended by Grit Brokerage and that the Complainant initiated the purchase proposal through the landing page. In any event, the parties did not agree to a sale, and this proceeding followed.

5. Parties’ Contentions

A. Complainant

The Complainant cites its registered KINK trademark and asserts that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent is not known by a corresponding name, has not used the disputed domain name in connection with an offering of goods or services or a legitimate fair use, and has instead offered only to sell the disputed domain name.

The Complainant argues for a finding of bad faith because the Respondent registered the disputed domain name after the Complainant registered its trademark and primarily for the purpose of selling the disputed domain name to the Complainant for an excessive price.

B. Respondent

The Respondent does not dispute the Complainant’s trademark, although the Respondent denies prior knowledge of the Complainant or its mark. The Respondent argues that “kink” is a common four-letter dictionary word with “many uses and meanings” and has value in combination with the “.ai” Top-Level Domain (“TLD”), which is “popular with companies in and projects related to artificial intelligence”. The Respondent observes that the United States Patent and Trademark Office has “255 total records

and 113 active records for trademarks with the word KINK with or without other classifiers”.

The Respondent explains that he registered the disputed domain name “with the intent to turn it into a startup venture, KINK AI”.

“Specifically, the Respondent pursued exploration into a project that would use fixed and/or mobile remote sensing combined with artificial intelligence to evaluate the health and safety of commercial plumbing installations; e.g. measuring virus levels in wastewater and/or metal contaminants in drinking water.”

The Respondent says he “has a history of purchasing .ai domains as a means to seed company formation”, citing <mast.ai>, which the Respondent used for “a venture capital backed company that leveraged artificial intelligence to secure and protect medical devices”.

The Respondent contends that he registered the disputed domain name in good faith and held it for nearly six years without soliciting purchase from the Complainant or any other KINK trademark holder. The Respondent still has plans to develop a related website for a venture-backed “KINK AI” startup, but in the interim arranged for Grit Brokerage to handle any inbound inquiries for the domain name, to save time and trouble. The Respondent states that he did not set price targets with the broker but retained the right to approve any sale.

The Respondent requests a finding of Reverse Domain Name Hijacking.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) the 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. Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

The first element of the Policy “functions primarily as a standing requirement” and entails “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 holds a trademark registration for KINK as a word mark. The disputed domain name is identical to that mark. As usual, the Top-Level Domain “.ai” may be disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Panel finds that the disputed domain name is identical to the Complainant’s mark and concludes that the Complainant has established the first element of the Complaint.

B. Rights or Legitimate Interests, and Registered and Used in Bad Faith

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following: “(i) before any notice to you 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 (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 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.”

It is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

Here, the Complainant has made a *prima facie* case by establishing its trademark rights, denying that the Respondent has authorization to use the Complainant’s marks, observing that the Respondent does not appear to be known by a corresponding name, and demonstrating that the Respondent has used the disputed domain name merely to offer the disputed domain name for sale.

In this case, the disputed domain name corresponds to a dictionary word with multiple meanings, and the Respondent claims to have an intended use for the combination with the TLD, “kink ai” referring to a business application employing artificial intelligence. In such a case, it is appropriate to consider the precedents reported in [WIPO Overview 3.0](#), section 2.10.1:

“Panels have recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term/phrase will not necessarily suffice. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights. ...

Panels also tend to look at factors such as the status and fame of the relevant mark and whether the respondent has registered and legitimately used other domain names containing dictionary words or phrases in connection with the respective dictionary meaning.”

Here, the Complainant has furnished no evidence concerning the fame of the relevant mark. It also does not appear that the Respondent has taken concrete steps to realize his stated intention to create a business plan and attract venture capital for the contemplated enterprise involving health and safety measurements in commercial plumbing. However, the Respondent does articulate concepts for the disputed domain name and has some relevant history, registering and similarly developing another “.ai” domain name.

The Panel observes that the Complainant’s argument regarding the Respondent’s registration in bad faith is not compelling. The relevant facts are essentially those that also support the Respondent’s counterargument that it legitimately selected the disputed domain name for its dictionary sense. The Complainant relies on the premise that the Respondent registered the disputed domain name in order to sell it to the Complainant for a price in excess of out-of-pocket costs. But the Complainant offers no convincing evidence to support the likelihood that the Respondent was aware of its mark. The Complaint, for example, does not identify a website operated by the Complainant or offer evidence of its market presence or popularity at the time the disputed domain name was registered. Thus, the Complainant does not overcome the Respondent’s denial of prior awareness or intent to target its mark, which the Complainant should have addressed in its initial filing, especially considering that the Respondent held the disputed domain name for some six years without approaching the Complainant, and noting the disputed domain name corresponds also with a dictionary term.

The Respondent plausibly denies prior awareness of the Complainant’s mark and points out that the dictionary word, and its combined sense in tandem with “ai” or “artificial intelligence”, is multifaceted and valuable. The Panel considers that the inquiry here is properly focused on whether the probability is that the Respondent selected the disputed domain name for its dictionary value as opposed to its trademark value. The Panel finds the former more likely and concludes, therefore, that the Complainant fails to establish the third element of the Complaint.

7. Reverse Domain Name Hijacking

Paragraph 15(e) of the UDRP 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 (‘RDNH’) or was brought primarily 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 Respondent has requested such a finding here.

Reverse Domain Name Hijacking is defined under the UDRP Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”. Mere lack of success of a complaint is not sufficient to find Reverse Domain Name Hijacking. See [WIPO Overview 3.0](#), section 4.16. A finding of RDNH is warranted, for example, when a panel finds that the complainant should have recognized that it could not succeed on one of the three elements of the complaint under any fair interpretation of the available facts or brings a complaint based “on only the barest of allegations without any supporting evidence” (*id.*). That is not the case here, although the Complaint was not ultimately persuasive.

Accordingly, the Respondent’s request is denied.

8. Decision

For the foregoing reasons, the Complaint is denied.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: April 28, 2023