

ADMINISTRATIVE PANEL DECISION

Delfont Mackintosh Theatres Limited v. Domain Privacy, Domain Name Privacy Inc

Case No. D2024-2920

1. The Parties

The Complainant is Delfont Mackintosh Theatres Limited, United Kingdom, represented by Boulton Wade Tennant, United Kingdom.

The Respondent is Domain Privacy, Domain Name Privacy Inc, Cyprus.

2. The Domain Name and Registrar

The disputed domain name <noelcowardtheatre.org> is registered with MOBIKAPP Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 17, 2024. The same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 19, 2024, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 2024, 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 July 29, 2024.

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 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 29, 2024.

The Center appointed Ada L. Redondo Aguilera as the sole panelist in this matter on September 9, 2024. 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, Delfont Mackintosh Theatres Limited, operates eight of the of the most prestigious theatres in London's West End, including the Noël Coward Theatre, located on St Martin's Lane, London, WC2N 4AU.

The theatre originally opened in 1903 as the "New Theatre" and was renamed the "Albery Theatre" in 1973. In 2006, the theatre was renamed the "Noël Coward Theatre", after the English playwright, composer, director, actor, and singer, Sir Noël Peirce Coward. Many of Sir Noël Peirce Coward's plays were performed at the Complainant's theatres, including at the Gielgud Theatre (formerly, the Globe Theatre); the New Theatre and Albery Theatre (now, the Noël Coward Theatre); the Queen's Theatre (now, the Sondheim Theatre); the Prince of Wales Theatre; and the Wyndham's Theatre.

The first production performed at the Noël Coward Theatre was the Tony Award-winning musical comedy, Avenue Q, which opened in June 2006.

The Noël Coward Theatre has staged and hosted several notable productions. By way of example, and not limitation, the Complainant mentioned the following: in 2011, the Moscow-based theatre company Sovremennik gave its first London season by a major Russian company for over 20 years; in the year 2012, for the first time in their 30-year history, LIFT presented a show in the West End; in 2015, Nicole Kidman returned to the West End stage; in 2016 Cameron Mackintosh's new production of Half a Sixpence transferred from the Chichester Festival Theatre and made a star of Charlie Stemp in the role of Arthur Kipps – for which he was nominated for a UK Theatre Award (for Best Performance in a Musical) and a Laurence Olivier Award (for Best Actor in a Leading Role in a Musical), and won a WhatsOnStage Award for Best Actor in a Musical.

The Complainant is the owner of the trademark NOEL COWARD THEATRE issue by the Intellectual Property Office of the United Kingdom in the Class 41 registration number UK00002548286 and registration date August 20, 2010, covering "production of musicals, plays, concerts, television programs and films; film television and theatrical entertainment services; ticket sales and ticket agency services".

The Complainant has the official website "www.noelcowardtheatre.co.uk".

The disputed domain name was registered on October 4, 2023.

The disputed domain name resolves to an active website displaying a parking page containing various commercial and/or sponsored pay-per-click ("PPC") links to third party websites.

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 to their mark due to the fact that the disputed domain name incorporates in its entirety the Complainant's trademark, NOEL COWARD THEATRE, only by adding a generic Top-Level Domain ("gTLD") ".ORG".

The Complainant claims that the Respondent does not have any rights or legitimate interests in respect of the disputed domain name. There is no fair or legitimate use of the disputed domain name according to the Complainant.

The Complainant contends that the disputed domain name was registered and has been used in bad faith. According to the Complainant, the website displayed in the disputed domain resolves to an active website displaying a parking page containing various commercial and/or sponsored PPC links to third party websites. These PPC links redirect the Internet user to the websites of various companies selling theatre tickets to various West End productions, including productions staged and hosted by competitors of the Noël Coward Theatre. These include the following companies, which provide online reservation facilities for many London theatres and major West End productions: Love Theatre (“www.lovetheatre.com”); London Theatre (“www.londontheatre.co.uk”); London Box Office (“www.londonboxoffice.co.uk”); and London Theatre Direct (“www.londontheatredirect.com”). Some of the above-mentioned companies also sell tickets to productions hosted and staged at the Noel Coward Theatre itself.

The Complainant requests that the disputed domain name be transferred to them.

B. Respondent

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

6. Discussion and Findings

In order to succeed in its Complaint, the Complainant must demonstrate that all of the elements enumerated 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 with respect to 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 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 Complainant’s trademark is reproduced in its entirety within the disputed domain name. Accordingly, the disputed domain name is identical to the Complainant’s trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Indeed, the Panel finds that the disputed domain name is identical to the Complainant’s trademark since it is acknowledged that the gTLD in the present case “.org”, may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark, as it is, in this case, a technical requirement of registration. [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.

According to the Complainant, the Respondent is not in any way affiliated with the Complainant or otherwise authorized or licensed to use the Complainant’s trademark, or to seek registration of any domain name incorporating the Complainant’s trademark

In the present case, the disputed domain name resolves to an active website displaying a parking page containing various commercial and/or sponsored PPC links to third party websites. These PPC links redirect the Internet user to the websites of various companies selling theatre tickets to various West End productions, including productions staged and hosted by competitors of the Noël Coward Theatre.

According to the evidence presented by the Complainant, some of the companies mentioned also sell tickets to productions hosted and staged at the Noël Coward Theatre itself.

The consensus view of previous panels is that use of a domain name to host parking and landing pages or PCC links may be permissible in some circumstances but would not of itself confer rights or legitimate interests arising from a “bona fide offering of goods or services” or from “legitimate noncommercial or fair use” of the domain name. This is specially so where such links result in a connection to goods or services competitive with those of the complainant. Indeed, as outlined at section 2.9 of the [WIPO Overview 3.0](#): “Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet user.

Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible (and therefore consistent with respondent rights or legitimate interests under the UDRP) where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant’s (or its competitor’s) trademark. In cases involving a website that is not predominantly a ‘typical’ parked or PPC site (e.g., a blog, forum, or other informational page), where other clear, non-pretextual indicia of respondent rights or legitimate interests are present, some panels have been prepared to accept the incidental limited presence of PPC links as not inconsistent with respondent rights or legitimate interests.”

As aforementioned, the PPC links displayed on the parking page to which the disputed domain name resolves, redirects Internet users to websites which sell and re-sell theatre tickets to West End productions, and thus ultimately compete with the Complainant. Furthermore, the disputed domain name is identical with the Complainant’s well-known trademark, and, at the time that the disputed domain name was registered, the Complainant had been operating under the trademark for over 17 years and enjoyed a significant goodwill and reputation in the trademark, as demonstrated above.

Taking all the above mentioned into account the Panel recognized that the that the Respondent was aware of the Complainant’s trademark and the Complainant’s domain name when it registered the disputed domain

name, that the Respondent intends to trade off the Complainant's trademark, and the goodwill and reputation enjoyed therein; to compete with and capitalize on the reputation and goodwill of the Complainant's trademark; and/or to mislead and confuse Internet users, and this cannot support the Respondent's rights or legitimate interests. The use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with a complainant's trademark.

Based on the foregoing, the Panel finds that the Respondent's use of the disputed domain name does not constitute a bona fide use or a legitimate noncommercial or fair use of the disputed domain name, and that the Respondent has no rights or legitimate interests in the disputed domain name.

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.

According to section 3.1.1 of the [WIPO Overview 3.0](#), the circumstances which may indicate that the Respondent's intent in registering the disputed domain name was in fact to profit in some way from or otherwise exploit the Complainant's trademark include, alone or together: (i) the respondent's likely knowledge of the complainant's rights; (ii) the distinctiveness of the complainant's mark; and (iii) website content targeting the complainant's trademark (e.g., through links to the complainant's competitors). Under section 3.1.4 of the [WIPO Overview 3.0](#), panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

The Panel finds that the disputed domain name is identical with the Complainant's trademark, which was registered before the disputed domain name. Therefore, the Panel also finds that it is inconceivable that the Respondent was unaware of the existence of the Complainant, its trademark and the Complainant's domain name when it registered the disputed domain name. Given the reputation of the Complainant's trademark in respect of theatre services and the unlikelihood of the Respondent selecting the disputed domain name by chance.

The Complainant submits that as before mentioned, the Respondent is using the disputed domain name, which is identical with the Complainant's well-known trademark, to intentionally attract, for commercial gain, Internet users to the PPC parking page hosted on the disputed domain name in a manner that confuses and misleads Internet users. In the present case, the parking page contains PPC links to websites offering theatre services that directly compete not only with the Complainant in general, but with the services that the Complainant offers under the trademark, and at the Complainant's official website displayed in their own domain name.

The Panel finds that given the reputation and goodwill that the trademark enjoys, that the public and the Internet users are likely to be confused into thinking that the disputed domain name has a connection with the Complainant, contrary to the fact proven by the Complainant. Indeed, the Respondent has, by using an identical domain name, created a strong likelihood of confusion (as to the source, sponsorship, affiliation or endorsement) with the Complainant's trademark.

Accordingly, the Panel finds that by choosing to register and use the disputed domain name, which is identical with the trademark and the Complainant's domain name, the Respondent intended to benefit of the goodwill of the trademark in a direct attempt, by exploiting, for commercial gain, the Internet users destined to the Complainant. The Panel finds that the conduct of the Respondent (as far as the choice of the disputed domain name and the website to which the disputed domain name resolves) is indicative of registration and use of the disputed domain name in bad faith.

The Panel also finds that in the present case, the Respondent has registered the disputed domain name primarily for the purpose of competing with and disrupting the Complainant's theatre. For the reasons set out above, the Respondent must have been aware of the Complainant's rights in the trademark when it registered the disputed domain name. Moreover, the Respondent could not have chosen or subsequently used the trademark in its domain name for any reason other than to trade on the Complainant's rights, to confuse Internet users, and to attract them to a website with a name identical with the trademark with the intention of profiting from the reputation and goodwill in the trademark. That is, by itself, evidence of bad faith, both generally and specifically, within the meaning of Rule 4(b)(iii) of the Policy.

In the present case, the Respondent is using a privacy or proxy service to mask its details on the publicly-available Whois and has chosen not to participate in this proceeding. The Panel finds that under the circumstances in this case, the use of a privacy/proxy service is a further indication of bad faith, as per section 3.6 of the [WIPO Overview 3.0](#), which states: "Where it appears that a respondent employs a privacy or proxy service merely to avoid being notified of a UDRP proceeding filed against it, panels tend to find that this supports an inference of bad faith; a respondent filing a response may refute such inference."

In the light of the foregoing, the Panel concludes that the disputed domain name was registered and is being used in bad faith; and therefore, to find that the Complaint fulfills the paragraph 4(a)(iii) of 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 <noelcowardtheatre.org> be transferred to the Complainant.

/Ada L. Redondo Aguilera/
Ada L. Redondo Aguilera
Sole Panelist
Date: September 23, 2024