Decision for dispute CAC-UDRP-102671

Case number	CAC-UDRP-102671
Time of filing	2019-09-24 11:35:39
Domain names	interscoperecordings.com, interscoperecord.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	UMG Recordings, Inc.
Organization	Interscope Records

Complainant representative

Organization	RiskIQ, Inc. c/o Jonathan Matkowsky

Respondent

Name	ASHLEY WILSON

OTHER LEGAL PROCEEDINGS

The Complainant has declared that there are no other legal proceedings, pending or decided, which relate to the disputed domain names. The Panel is not aware of any such proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of a number of marks for the string INTERSCOPE or INTERSCOPE RECORDS, in class 9 (sound recordings, etc), including registrations in the United States (1727177, dating from 1992, INTERSCOPE RECORDS) and the European Union (004465753, dating from 2005, INTERSCOPE).

FACTUAL BACKGROUND

The Complainant, a corporation with its seat in Delaware, USA, is ultimately owned by a French corporation and operates in multiple territories. It has a broad range of activities in the music industry, which are carried out through multiple 'record labels'. One of those labels is Interscope, which dates from 1990 (in so far as it denotes a record label); in this context, it operates a website at <INTERSCOPE.COM>.

The Respondent(s) are, according to WHOIS records, individuals with addresses in York, South Carolina, USA, who registered the disputed domain names on 15 August 2019 and 19 July 2019. As there has been a request for consolidation in the present Proceedings, please see 'Procedural Factors', below, for further consideration of the Respondent(s). References

within this Decision to 'the Respondent' should be read in light of the discussion of consolidation.

PARTIES CONTENTIONS

No administratively compliant response has been filed. E-mail messages sent to the addressed provided by the Respondent were returned undelivered due to permanent fatal errors (i.e. the address appeared not to exist).

The Complainant submits that the disputed domain names are confusingly similar to its trade marks. It contends that the Respondent has no rights or legitimate interests in respect of said domain names, and that (citing various grounds) they were registered and are used in bad faith. It seeks the transfer of the disputed domain names to itself.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

The disputed domain name <INTERSCOPERECORDINGS.COM> can be considered either as confusingly similar to the mark INTERSCOPE (accompanied as it is by a generic term 'recordings' which is descriptive of the Complainant's goods and services) or confusingly similar to the mark INTERSCOPE RECORDS (being a grammatical variation i.e. 'records' vs 'recordings').

The disputed domain name <INTERSCOPERECORD.COM> can be considered either as confusingly similar to the mark INTERSCOPE (accompanied as it is by a generic term 'record' which is descriptive of the Complainant's goods and services) or confusingly similar to the mark INTERSCOPE RECORDS (being distinguished only by singular vs plural i.e. 'record' vs 'records').

The principle that the addition of a generic term that describes the Complainant's services does not displace confusing similarity is well established; see e.g. WIPO AMC D2016-0299 Mirimax Film NY v Todt Nicolas <miramax-films.com> (trade mark MIRIMAX and descriptive term FILMS).

The generic TLD .com is disregarded for the purposes of this analysis, in accordance with normal UDRP procedure.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

The Complainant has declared that the Respondent has no permission or approval from Complainant to register or use either of the disputed domain names. The Panel has not been able to identify any plausible rights or legitimate interests that would be applicable in the present case. The Respondent has not participated and so has not provided any assistance in this regard. The use of the disputed domain names to redirect Web users to the Complainant's website (discussed further, elsewhere in this Decision) does not provide any evidence that would be relevant to a finding of rights or legitimate interests (that is, there is no relevant activity associated with the disputed domain names which would serve as the basis for further consideration of this point).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

The Complainant contends here, referring to one of the examples set out in paragraph 4(b) of the Policy (at 4(b)(iv)), that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or location or of a product or service on the Respondent’s website or location.

The basis for this argument includes the implementation of the above-mentioned redirect (where Internet users attempting to access a website at either of the disputed domain names are redirected to the Complainant's website) and the use of the disputed domain names for e-mail purposes (evidenced through the configuration of mail servers). It is noted in the WIPO Jurisprudential Overview, version 3.0, at paragraph 3.4, that bad faith regarding the use of a domain name can be found in relation to uses other than websites, such as where a Respondent uses a domain name 'to send deceptive e-mails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the Complainant's actual or prospective customers.'

The Complainant argue that the redirect and the configuration of the mail servers, taken together, mean that e-mails would be likely to be deceptive, e.g. to impersonate the Complainant such as in a social engineering scheme (and so reinforcing the erroneous legitimacy by means of the redirect). While there is no factual evidence of the use of the disputed domain names in this way, the Complainant has made a plausible (and uncontradicted) case that there is no other reasonable explanation for the Respondent's conduct. In this context, the fact that the Respondent was obviously aware of the Complainant (proven by the creation of the redirect, as well as the very close similarity between the marks and the disputed domain names, and the Complainant's global reputation) provides further support for the finding of bad faith.

It is noted that the Complainant has not pointed to any previously decided cases regarding e-mail and bad faith, although it has provided a copy of a general statement by law enforcement on deceptive e-mail. The Panel notes its own summary of cases across Providers concerning e-mail and bad faith (CAC Case 102380 Pepsico v Allen Othman <PEPSICCO.COM>), as well as the above-mentioned passage in the WIPO Jurisprudential Overview, and is content that UDRP practice is reasonably clear regarding this topic. Even without the consideration of e-mail, there would be a reasonably plausible basis for a finding of bad faith on a simple likelihood of confusion analysis (though with a need to consider the nature of the uses in question).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

The Complainant, in its Amended Complaint and in its correspondence (Non-Standard Communications) with the Provider, has requested that the Complaint address two separate domain names which purport to be registered in different names. In doing so, the Complainant makes a legal argument, drawing upon earlier decisions under the UDRP, which falls within the scope of the interpretation of paragraph 4(f) of the Policy (which empowers a Panel to consolidate, at its sole discretion, 'multiple disputes' between a Respondent and Complainant) and rule 10(e) of the UDRP Rules. There is no explicit reference to consolidation in the Supplemental Rules of the Provider.

A generally accepted test for consolidation is found in WIPO AMC D2010-0281, Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons (which is discussed in the Complaint); as shown there, Panels must be satisfied that there is, on the balance of probabilities, common control of the disputed domain names, and that it would be fair and equitable to consolidate. This is further discussed in reference works, e.g. T Bettinger and A Waddell, Domain name law and practice (2nd edn, Oxford University Press, 2015) at IIIE.106), and in the WIPO Jurisprudential Overview at 4.11.2 (where a lengthy list of relevant factors is set out). There are also a number of cases at the present Provider where consolidation has been requested and has taken place, e.g. CAC Case 102624 TOD'S S.p.A. v PrivacyGuardian.org; CAC Case 102078 Mammut Sports Group v Xian Wei Fa; CAC Case 101772 Novartis AG v novartis. Reviewing these earlier Decisions similarly discloses a range of factors taken into account including a similar pattern of behaviour in managing the disputed domain names, similarities in contact details (in part or in full), and factors relating to the names themselves. In cases where consolidation has been deemed inappropriate, emphasis is placed on factors such as a diversity of interests between the Respondents; see for instance WIPO AMC D2017-0658 o2 Worldwide v Dan Putnam and others.

The Panel finds that the Complainant makes a reasonable case for consolidation in the present proceedings. The Respondent, or Respondents if that is to be the case, has or have been given an opportunity to respond to the proposal for consolidation. No such response has been received.

The disputed domain name <INTERSCOPERECORDINGS.COM> is registered in the name 'Ashley Wilson', whereas the

disputed domain name <INTERSCOPERECORD.COM> is registered in the name 'Malik Hall'. The Complainant advances three sets of reasons why the two matters should nonetheless be addressed in a single Decision; the first relates to the name itself (which, the Panel observes, would not without more be compelling), the second to the contact details of the Respondent(s), and the third to the use of the domain names.

It is first contented that both disputed domain names, which are both in the .COM gTLD space, contain the string 'INTERSCOPERECORD'. Then, it is argued that the contact details for both disputed domain names are individuals at the same town and postal code in the United States. The third set of issues includes the argument that mail server records were updated in a similar way in recent months (specifically, MX records and Sender Policy Framework (SPF)), and the use of the same redirect (to the Complainant's website).

PRINCIPAL REASONS FOR THE DECISION

The Complainant has shown that the Respondent has no rights or legitimate interests in the disputed domain names, which closely resemble (and are confusingly similar to) the Complainant's marks. The Respondent's knowledge of the Complainant is apparent not just from this similarity but from the Respondent's decision to use the disputed domain names to redirect Web users to the Complainant's website. The Complainant has, in this context, provided further evidence which points towards the use (or threatened use) of the disputed domain names in connection with deceptive e-mails. The Respondent has not participated in these proceedings, and the Panel is able to find that the disputed domain names were registered and are being used in bad faith. The Panel also considered, and ultimately accepted, the request of the Complainant that the disputes concerning two different disputed domain names be consolidated, on the grounds of the likelihood that the purported registrants were acting under common control, given the similarities between the contact details provided and the conduct in respect of each disputed domain names. The Panel ordered that the disputed domain names be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **INTERSCOPERECORDINGS.COM**: Transferred
2. **INTERSCOPERECORD.COM**: Transferred

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2019-11-19

Publish the Decision