



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE
DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL
DECISION

CIIDRC case number:	20450-UDRP	Decision date: May 1, 2023
Domain Names:	mriyaaid.com and mriyaaid.org	
Panel:	Steven M. Levy, Esq.	
Complainant:	Mriya Aid Org Inc.	
Respondent:	Russell Wynings/ Dru Wynings	

1. PROCEDURAL HISTORY

- On March 28, 2023, Mr. Alexander Bakus filed a Complaint on behalf of Mriya Aid Org Inc. pursuant to the UDRP and the UDRP Rules.
- The Registrars, CloudFlare, Inc. and Google LLC, of the disputed domain name were notified of this proceeding on March 28, 2022.
- Registrar locks were applied to <mriyaaid.com> on March 29, 2023 and to <mriyaaid.org> on March 28, 2023.
- On March 29, 2023, CIIDRC, as Service Provider, found that the complaint was not compliant with UDRP rule 3.2. A deficiency letter was sent on the same date. The complaint was resubmitted on March 30, 2023 and was found to be compliant.
- Pursuant to UDRP Rule 4 and Supplemental Rule 5, CIIDRC notified the Respondent of this administrative proceeding and forwarded a Notice of commencement of these proceedings along with the Complaint the Respondent on March 31, 2023.
- The deadline for a response was set as April 20, 2023. CIIDRC received a request for a four-day extension from the Registrant (until April 24, 2023).
- The Respondent filed a response on April 24, 2023.

- The Complainant and Registrant in this administrative proceeding has elected for a Panel consisting of a single-member.
- On April 25, 2023 CIIDRC received an additional submission from the Complainant. The parties exchanged email correspondence regarding the additional submission.
- On April 25, 2023, CIIDRC hereby appointed Steven M. Levy, Esq., as a single-member Panel in the above-referenced matter.
- On April 27, 2023 CIIDRC received a further additional submission from the Complainant.

This matter is conducted pursuant to the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) of the Internet Corporation for Assigned Names and Numbers (ICANN).

2. FACTS ALLEGED BY THE PARTIES

The following facts are uncontested as between the parties:

- The Domain Names were both registered by Respondent on March 10, 2022.
- The concerned Registrar for the <mriyaaid.com> domain name is Cloudflare Inc. The concerned Registrar for the <mriyaaid.org> domain name is Google LLC.
- The entity Mriya Aid Org Inc. was created as a not-for-profit corporation in Ontario, Canada on April 13, 2022.
- An application to register the term MRIYA AID as a trademark was filed on March 2, 2023 with the U.S. Patent and Trademark Office (“USPTO”).
- Respondent was a member of Complainant’s board of directors until he resigned from that body in July of 2022.

The following facts are alleged by Complainant only:

- Complainant “was created in March 2022 to undertake fundraising, to ship humanitarian and medical equipment and supplies to Ukraine, and to procure and ship non-lethal reconnaissance equipment to military units of the Ukrainian Armed Forces in Ukraine” and that it “is a collection of volunteers who are volunteering their person time and efforts for various work of the organization.”
- Respondent “joined Mriya Aid as a volunteer at the outset, and he took on certain tasks relating to the creation a website for the organization. In that role, he registered the two domains MriyaAid.com and MriyaAid.org.” These domain names were registered “exclusively on behalf of the organization.”
- It is “flagrantly false for Dru Wynings to claim that he conceived of the name ‘Mriya Aid’.... * * * [T]he name ‘Mriya Aid’ was adopted by the volunteers at the suggestion of” another member of the board of directors.

- Respondent offered to “transfer the management of various online tools” to Complainant but that he “asked to be paid the cost of merchandise that he ordered for purposes of promotion and fundraising for Mriya Aid.”

The following facts are alleged by Respondent only:

- “I was a Co-Founder of Mriya Aid, conceived of the name and registered the domain weeks before Mriya Aid ever existed.”
- “I was personally threatened by a Mriya Aid Co-Founder...”
- Complainant “reimbursed me for out of pocket expenses I made to purchase Mriya Aid merchandise. There was no other promise or legal obligation in relation to this.”

3. CONTENTIONS OF THE PARTIES

- **Complainant**

Complainant submits that it owns trademark rights to the term MRYIA AID based on its use of this term in connection with promotion and fundraising for the “ship[ment of] humanitarian and medical equipment and supplies to Ukraine, and to procure and ship non-lethal reconnaissance equipment to military units of the Ukrainian Armed Forces in Ukraine.” It has also filed a trademark application with the USPTO on March 2, 2023 and this application is currently pending. Complainant claims that Respondent joined its organization as a volunteer and that he registered the disputed domain names on behalf of the organization. Following his resignation from the board in July of 2022, Respondent has “publicly disassociated himself altogether from Mriya Aid”, he “continues to refuse to transfer the ownership of the two domains” and he “does not have any legitimate non-commercial or fair used of the domain names for any purpose or activity whatsoever.” Respondent has acted in bad faith as “[t]here can be absolutely no legitimate reason or purpose for Dru Wynings to refuse to transfer ownership of the domain...” and Respondent’s actions have impacted Complainant by hindering fundraising, creating security concerns, and creating other technical issues. Respondent has “made several false statements in his Response to Complainant” and it is “flagrantly false for Dru Wynings to claim that he conceived of the name ‘Mriya Aid’....”

- **Respondent**

The Respondent submits that “Complainant has significantly mischaracterized my relationship to the organization” and that “[a]s the co-founder of Mriya Aid, I conceived the name, designed the logo, and developed the website” and that “I never transferred my exclusive rights to the trademark to the organization....” He states that “the term ‘Mriya’ is a common Ukrainian word that translates to ‘dream’ in English.... It is also the name of a well-known aircraft, Antonov An-225 Mriya, and is associated with its manufacturer, Antonov.... Moreover, there are other pre-existing [third-party] organizations with the name

'Mriya'....” Further, he claims to have “registered these domain names weeks before the legal creation of Mriya Aid and have expressed my intention to use them for fair use purposes.” Respondent asserts that “[a]s the co-founder of Mriya Aid, I have legitimate interests and rights in the domain names. I registered them in good faith and contributed significantly to the organization's branding and online presence. Following my departure from the organization, I intend to use the domain names for a fair use purpose: documenting my experiences founding Mriya Aid, along with the fall out from the alleged fraud I witnessed the organization conduct”. His activity “is not aimed at profiting from or disrupting the organization's activities or tarnishing its reputation” and “this complaint was filed to harass me due to the organization's suspicion that I acted as a whistleblower....”

- **Remedy Sought**

The Complainant requests the Domain Names be transferred to it.

4. DISCUSSION AND FINDINGS

4.1 Requirements

In accordance with Paragraph 4 of the Policy, the onus is on the Complainant to prove:

1. That the Domain Name is Identical or Confusingly Similar to a trademark or service mark in which the Complainant has rights:
2. That the Registrant has no rights or legitimate interests in the Domain Name; and
3. That the Domain Name has been registered and being used in bad faith.

The Panel will consider each of these requirements in turn.

4.2 Analysis

Issues Of Fact Exist And The Case Is Beyond The Scope Of The Policy:

As an initial matter, the pleadings raise a number of critical factual disputes between the parties which would more appropriately be decided by a court of law with its attendant evidentiary tools (discovery, witness testimony, cross-examination, etc.) *Arbor Networks, Inc. v. Benjamin Dynkin / Atlas Cybersecurity*, FA 1899115 (FORUM July 17, 2020) (“there are factual and legal issues that are unresolved by the evidence presented and the Panel is of the opinion that this case is not one that is well suited for resolution under the Policy”, *citing AirMax Construções Aeronáuticas LTDA v. Richard Rofe / seamaxamerica.com*, FA 1763605 (FORUM Feb. 9, 2018) (finding serious issues of fact and law that “can be resolved only by the use of forensic powers which a Panel under the UDRP does not have, such as deposition evidence by cross examination, discovery....”)¹

¹ Also see, *WIPO Jurisprudential Overview 3.0*, par. 4.14.6: Scope of UDRP as grounds for termination
Depending on the facts and circumstances of a particular case, and irrespective of whether the parties may also be engaged in court litigation, in some instances (e.g., complex business or contractual disputes) panels have tended to deny the case not

These include, at a minimum, whether trademark rights exist in the phrase MRIYA AID, who owns any such trademark rights, and whether Respondent has or had authorization to use this phrase and to what extent.

Further, the Panel is of the opinion that the above-referenced factual disputes raise issues which exceed the very limited scope of the Policy. Panels have recognized that “[t]he Policy’s purpose is to combat abusive domain name registrations and not to provide a prescriptive code for resolving more complex trade mark disputes”. *Luvilon Industries NV v. Top Serve Tennis Pty Ltd.*, DAU2005-0004 (WIPO Sept. 6, 2005). In *The Thread.com, LLC v. Jeffrey S. Poploff*, D2000-1470 (WIPO Jan. 5, 2001), the Panel noted that an “attempt to shoehorn what is essentially a business dispute between former partners into a proceeding to adjudicate cybersquatting is, at its core, misguided, if not a misuse of the Policy.” Also see *Courtney Love v. Brooke Barnett*, FA 944826 (FORUM May 14, 2007) (“the purpose of the Policy is not to resolve disputes between parties who might each have legitimate rights in a domain name. The purpose of the Policy is to protect trademark owners from cybersquatters, that is, from people who abuse the domain name system in a very specific way, which specific way is outlined in Paragraph 4(a) of the Policy.” Further, “the present case appears to hinge mostly on a business or civil dispute between the parties....”) In addition to the trademark issues raised above, the present situation potentially involves questions of entity formation and governance, the terms of written or verbal agreements, fiduciary duty and tortious interference, and debtor obligations, all of which may impact the ownership of the disputed domain names and all of which exceed the scope of the Policy. These issues are uniquely suited to resolution through litigation in a court of competent jurisdiction.

4.2.1 Are the Domain Names Identical or Confusingly Similar to a Mark in which the Complainant has Rights?

As noted above, there exist material issues of fact regarding whether trademark rights exist in the phrase MRIYA AID and, if so, who owns such rights. Complainant submits numerous screenshots of a website at the <mryiaaid.org> domain name as well as of Twitter and Facebook postings titled “Mriya Aid”. The parties have submitted differing narratives regarding the creation of this phrase, Respondent’s status in Complainant’s organization, and who owns any trademark rights attendant to the phrase. This ownership dispute is beyond the scope of the Policy and so the Panel declines to decide these questions.

Nevertheless, to the extent that trademark rights do exist in the phrase MRIYA AID, the Panel would find that each of the domain names is confusingly similar to such mark as their second levels consist entirely of the mark and they merely add the “.com” or “.org” gTLDs. *Neocortex Inc. v. Minhaz Uddin*, 20447-UDRP (CIIDRC Apr. 20, 2023) (“The Top Level Domain “.com” is disregarded under the confusing similarity test”, citing *WIPO Jurisprudential Overview* 3.0, par. 1.11.)

4.2.2 Does the Respondent have Rights or Legitimate Interest in the Domain Names?

on the UDRP merits but on the narrow grounds that the dispute between the parties exceeds the relatively limited “cybersquatting” scope of the UDRP, and would be more appropriately addressed by a court of competent jurisdiction.

In light of the above-mentioned fact and legal questions that are beyond the scope of the Policy, the Panel declines to analyze this element. Complainant submits copies of correspondence it has had with Respondent and claims that Respondent is withholding the domain name for improper purposes. In contrast, Respondent asserts that it “intend[s] to use the domain names for a fair use purpose: documenting my experiences founding Mriya Aid, along with the fall out from the alleged fraud I witnessed the organization conduct”. The <mriyaaid.com> domain name automatically redirects users to a website hosted at the <mriyaaid.org> domain name and this website solicits donations and describes the activities of an organization listed as Mriya Aid Org Inc. Presented with this limited evidence and given the conflicting trademark ownership and authorization claims made by the parties, the Panel is not in a position to make findings on whether Respondent has rights or legitimate interests in the Domain Names.

4.2.3 Has the Respondent Registered and Used the Domain Names in Bad Faith?

Similar to the above two elements, the Panel finds a number of material fact issues as well as legal issues that exceed the scope of the Policy and so it will also not make a decision on Paragraph 4(a)(iii). However, it should be noted that Complaint states that the Domain Names were registered by Respondent “exclusively on behalf of the organization.” Paragraph 4(a)(iii) of the Policy is stated in the conjunctive and a successful complainant must prove “bad faith registration *and* use” [emphasis added]. Where a respondent registers the disputed domain name with the knowledge and consent of the complainant, particularly in its role as a member of the complainant’s board of directors², there exist significant questions or whether the domain name was, in fact, registered in bad faith regardless of any subsequent bad faith use. As such, the UDRP does not appear to be the proper vehicle for Complainant to assert its claims and it may be more appropriate to proceed via court-based litigation.

5 DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Complaint is denied and the Panel orders that the <mriyaaid.com> and <mriyaaid.org> domain names remain with Respondent.

Made as of May 1, 2023

SIGNATURE OF PANEL

/Steven M. Levy, Esq./

² This is in contrast to a domain name that was registered by a complainant’s employee in a manner that is outside the scope of the employment, e.g., registering in the employee’s own name, registering after termination of employment, etc. See, e.g., *Al Dostor Journal for Press, Publications, Advertisement and Circulation v. Moniker Privacy Services/ Hany Albeshry (MONIKER3747617)*, D2011-2230 (WIPO Mar. 2, 2012).