



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

CIIDRC case number:	17349-UDRP	Decision date: September 16, 2022
Domain Name:	<martingouda.com>	
Panel:	David L. Kreider	
Complainant:	Martin Gouda	
Respondent:	Ryan Favro	

1. PROCEDURAL HISTORY

The procedural history was set out in a letter from the Canadian International Internet Dispute Resolution Centre (the “Centre” or “CIIDRC”) to the Panel:

On August 15, 2022, Mr. Martin Gouda filed a Complaint under the UDRP and the UDRP Rules.

On August 15, 2022, the Registrar, GoDaddy.com LLC, was notified of this proceeding, and on August 16, 2022, the Registrar transmitted by email to CIIDRC its verification response informing who is the Registrant, Respondent, in this administrative proceeding. The Registrar also confirmed that the Disputed Domain Name, **<martingouda.com>**, was placed on a Registrar lock.

On August 16, 2022, CIIDRC advised the Complainant that the Complaint does not comply with the Rules. Under UDRP Rule 4 (d), the Complainant had five days to correct all instances on non-compliance.

On August 16, 2022, the Complainant submitted its revised Complaint.

On August 17, 2022, CIIDRC confirmed compliance with the Rules and commencement of the dispute resolution process.

Under Rule 4 and Supplemental Rule 5, CIIDRC notified the Respondent of this administrative proceeding and forwarded a Notice with login information and a link to the Complaint to the Respondent on August 17, 2022.

The Respondent failed to file its response by the due date of September 6, 2022.

The Complainant in this administrative proceeding has elected for a Panel consisting of a single member.

On September 13, 2022, CIIDRC appointed the undersigned, David L. Kreider, Chartered Arbitrator (UK), as a single-member panel.

On September 15, 2022, the undersigned submitted his signed statement of acceptance and declaration of impartiality and independence to CIIDRC. Absent exceptional circumstances, and under Rule 15 (b), the Panel's decision is due by September 27, 2022.

The Disputed Domain Name <martingouda.com> was registered on February 3, 2012 and updated on expiry on February 4, 2022.

This matter is conducted under 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 Complainant alleges that his personal legal name is Martin Gouda and that he used and promoted his business as a multimedia professional using the Disputed Domain Name for many years. Upon the expiry of the Disputed Domain Name, the Respondent, Ryan Favro, registered the Disputed Domain Name and thereafter used the domain to re-direct Internet traffic to his own website, to smear and defame the Complainant in a variety of ways. The Respondent also offered the domain for sale for \$5,000. The Respondent engaged in these acts with the goal and intention of causing distress and harm to the Complainant, following the break-up of their longstanding friendship over a failed business transaction in 2012.

3. CONTENTIONS OF THE PARTIES

- **Complainant**

The Complainant submits that he and the Respondent grew up and attended school together. Their friendship of many years dissolved in 2012 over a failed deal for the sale and purchase of certain equipment.

Regarding the Disputed Domain Name, the Complainant alleges:

"This was the business card [photo bearing the name "MartinGouda.com"] used to promote this business and through this effort I was offered many more jobs with many other companies. I started doing webdesign and digital artwork professionally in 1996 and by 2008 I had been hired by other clients that took all of my time and

thus didn't feel the need to continue to use the domain MartinGouda.com however I do wish to use it again now and upon going back to find it reregistered to leverage me for money and no other purpose. I believe (*recte*) that this is a false registration as it's clear the registrant has no use for the domain and their sole interest (*recte*) in the [Respondent's taking] ownership is to block me for spite".

- **Respondent**

The Respondent failed to submit a Response.

- **Remedy Sought**

The Complainant requests the Disputed Domain Name be transferred to it.

4. DISCUSSION AND FINDINGS

4.1 Requirements

Under 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 requirement.

4.2 Analysis

4.2.1 That the Domain Name is Identical or Confusingly Similar to a Mark in which the Complainant has Rights

The Complainant alleges but has provided no evidence (for example: driver's license, passport, birth certificate, etc.), that his legal name is Martin Gouda, which is identical to the Disputed Domain Name. As the Respondent has failed timely to submit a response to the Complaint, however, the Panel has authority to accept the Complainant's unrefuted allegations as true even in the absence of evidence. The Panel accepts that the Complainant's lawful personal name is MARTIN GOUDA.

The addition of the top-level domain ".com" to the Disputed Domain Name is merely an administrative requirement of no relevance to determining confusing similarity or identity for UDRP purposes.

The Panel accepts that the Disputed Domain Name incorporates the Complainant's lawful personal name and finds that the domain name is identical or confusingly similar to the Complainant's lawful name.

The more vexed issue presented is whether the Complainant has any UDRP-relevant rights in his own given name MARTIN GOUDA under the facts as alleged.

Paragraph 1.5.2 of the WIPO UDRP Jurisprudential Overview 3.0 provides:

“The UDRP does not explicitly provide standing for personal names which are not registered or otherwise protected as trademarks. In situations however where a personal name is being used as a trademark-like identifier in trade or commerce, the complainant may be able to establish unregistered or common law rights in that name for purposes of standing to file a UDRP case where the name in question is used in commerce as a distinctive identifier of the complainant’s goods or services”.

Here, the Complaint does not allege that the Complainant had registered his name as a protected trademark. The remaining inquiry, therefore, is whether the Complainant is entitled to claim common law rights in the name for purposes of standing under Policy Paragraph 4(i).

Paragraph 1.3 of the WIPO UDRP Jurisprudential Overview 3.0 explains:

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services.

The Complaint alleges and provides evidence in photographs of the Complainant hosting various sporting and multimedia events, that MARTIN GOUDA is associated in the minds of a least a certain market segment of consumers with the multimedia services provided by the Complainant.

Although the Complainant appears to concede that he made little commercial use of the Disputed Domain Name during the period from 2008 to 2012, under all the circumstances, the Panel does not find that the Complainant thereby relinquished, abandoned, or forfeited his common law trademark rights in the MARTIN GOUDA mark, or that this period of limited use of the domain is fatal to the Complainant’s case.

Paragraph 1.3 of the WIPO Jurisprudential Overview 3.0 continues:

“The fact that a respondent is shown to have been targeting the complainant’s mark (e.g., based on how the related website is used) may support the complainant’s assertion that its mark has achieved significance as a source identifier”.

Here, the Complainant has alleged a litany of actions taken by the Respondent to pursue a personal vendetta against the Complainant by targeting the Complainant’s MARTIN GOUDA mark to injure and cause harm to the Complainant. The Respondent failed to submit a response and has not refuted or denied the allegations, which the Panel accepts as true. The Respondent’s offering the Disputed Domain Name for public sale at \$5,000 further evidences the Respondent’s assessment that the MARTIN GOUDA mark has achieved significance as a source identifier for the multimedia services offered by the Complainant, Mr. Martin Gouda.

The Panel finds that the Complaint satisfies the standing requirement of Policy Paragraph 4(i).

4.2.2 That the Respondent has No Rights or Legitimate Interest in the Domain Name

The Complaint alleges:

“He [the Respondent] has no other reason whatsoever (*recte*) to own this domain. He has never used it for any sort of commerce and has only maintained ownership for the sake of extortion and blocking my ability to communicate with past clients. His choice to own this domain is based in hate and a desire for retribution”.

The Complainant’s above-quoted allegation stands unrebutted by the defaulting Respondent, and this Panel accepts it as true. The Respondent has not attempted to assert that it has any right or legitimate interest in the Disputed Domain Name, which consists solely of the Complainant’s lawful name, MARTIN GOUDA.

The Panel finds that the Complaint satisfies the second element under Policy Paragraph 4(ii).

4.2.3 That the Respondent has Registered and Used the Domain Name in Bad Faith

The facts show the Disputed Domain Name <martingouda.com> was registered by the Complainant, Mr. Martin Gouda, on February 3, 2012. The registration expired and was updated and taken up immediately upon expiry by the Respondent, Mr. Ryan Favro, on February 4, 2022.

On the facts and evidence, the Panel finds that the Respondent had no conceivable reason for registering the Disputed Domain Name except to injure the Complainant as alleged, that the Respondent targeted the Complainant’s mark and registered and is using the Disputed Domain Name in bad faith within the meaning of the Policy.

4 DECISION and ORDER

In accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Panel orders that the Disputed Domain Name <martingouda.com> be transferred to the Complainant.

Made as of September 16, 2022

DAVID L. KREIDER



