



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Curtis Jackson v. WhoisGuard

Case No. D2006-0070

1. The Parties

The Complainant is Curtis Jackson, United States of America, represented by Moritt Hock Hamroff & Horowitz, LLP, United States of America (hereinafter, "Complainant").

The Respondent is WhoisGuard, California, United States of America (hereinafter, "Respondent").

2. The Domain Name and Registrar

The disputed domain name <g-unit.com> is registered with eNom.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 16, 2006, in electronic form and on January 19, 2006, in hard copy. On January 17, 2006, the Center transmitted by email to eNom a request for registrar verification in connection with the domain name at issue. On January 18, 2006, eNom transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant of the domain name at issue. The Center then queried eNom as to the "real identity of the registrant of the domain name," to which eNom replied that it was not the provider of the WhoisGuard privacy service and had no information beyond that listed in the public Whois lookup. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), 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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 26, 2006.

In accordance with the Rules, paragraph 5(a), the due date for Response was February 15, 2006. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 17, 2006.

The Center appointed M. Scott Donahey, Justin Hughes and Seth M. Reiss as panelists in this matter on March 7, 2006. The Panel finds that it was properly constituted. Each member of 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

Complainant is an internationally known recording artist, performing professionally under the name "50Cent" with his rap and hip hop group known as "G-Unit." In addition to Complainant, other members of the G-Unit group include "Lloyd Banks," "Young Buck," and "Tony Yayo."

Complainant holds two registrations for the mark G-UNIT with the United States Patent and Trademark Office ("USPTO"). The first of these issued on November 25, 2003, in connection with pre-recorded phonograph records, compact discs, audio and video cassettes, dvds featuring music, hats, T-shirts, sweatshirts and sweat pants, jerseys, and entertainment services in the nature of live performances by the musical group. Complaint, Annex D. The registration showed a date of first use in commerce in October, 2002. The second registration issued on September 6, 2005, in connection with newsletters relating to entertainment, photographs, posters, and pressure sensitive stickers. *Id.* Complainant also has two applications pending for registration of the G-Unit mark.

Complainant promotes, markets, and sells various products and merchandise under the G-Unit mark, including clothing, books, music videos, dvds and compact disks, posters, and jewelry, as well as conducting live performances under the trademarked name G-UNIT. The Complainant and those working on his behalf have invested tens of millions of dollars worldwide over the past three years to promote the G-UNIT mark. A Google search conducted for the term "G-Unit" gave results where the first 100 listings were virtually all references to Complainant and his G-Unit group. Complaint, Annex E. Complainant asserts that his use of the G-UNIT mark also gives rise to common law trademark rights in connection with the mark.

Complainant has introduced a line of G-Unit books featuring members of the G-Unit group as characters, a line of G-Unit sneakers manufactured and marketed by Reebok, a clothing line put out by Complainant's G-Unit Clothing Co. and games based on the G-Unit group and on Complainant, as well as music recordings and tapes. Complaint, Annex F.

Respondent registered the domain name at issue on September 24, 2004, almost two years after Complainant began using the G-UNIT mark in commerce, and some ten months after the issuance of the first registration by the USPTO Complaint, Annex A. Respondent uses the domain name at issue to resolve to a self-identified "fan site." Complaint, Annex G. The web site contains links to Ads by Google pages, all of which provide links to products and services unrelated to Complainant or his mark, links to opportunities for advertising on the web site, and links to a web site that offers online sale of jewelry and merchandise bearing Complainant's mark without Complainant's consent. Many of the merchandise items offered are directly competitive with those of

Complainant. Complaint, Annexes G, H, and I. Respondent's web site contains links to numerous web sites which promote, in addition to Complainant and his group, the likenesses, products, and music of direct competitors of Complainant. Complaint, Annexes L, M, N, O, P, and Q.

At the bottom of the home page of Respondent's web site, there is a disclaimer that the web site is not affiliated with Complainant, the G-Unit group, or any members thereof.

Respondent is not a licensee of Complainant and is not otherwise authorized to use Complainant's marks.

5. Parties' Contentions

A. Complainant

Complainant contends that the domain name at issue is identical and confusingly similar to Complainant's registered and common law mark G-UNIT, that Respondent has no rights or legitimate interests in respect of the domain name at issue, and that Respondent has registered and is using the mark in bad faith.

B. Respondent

Respondent is a privacy service. According to the terms and conditions of the WhoisGuard service, WhoisGuard subscribers are notified of communications concerning their domain names. Neither Respondent, nor the subscriber who utilized Respondent's privacy service to shield his, her or its identity replied to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy directs that the complainant must prove each of the following:

- 1) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and,
- 2) that the respondent has no legitimate interests in respect of the domain name; and,
- 3) that the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the domain name at issue is identical to Complainant's registered and common law mark G-UNIT. Panels have long held that the addition of the gTLD suffix is irrelevant in an examination of identity. *Credit Management Solutions, Inc. v. Collex Resource Management*, WIPO Case No. D2000-0029.

B. Rights or Legitimate Interests

The consensus view of WIPO panelists concerning the burden of establishing no rights or legitimate interests in respect of the domain name is as follows:

While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out an initial *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Section 2.1.

In the present case, Complainant has alleged that Respondent has no rights or legitimate interests in the domain name at issue, in that Respondent is neither a licensee nor otherwise authorized by Complainant to use Complainant's marks or copyrighted materials in any manner or media, including in conjunction with a web site. This establishes a *prima facie* case and shifts the burden to Respondent to demonstrate rights or legitimate interests in the domain name. This Respondent has failed to do. And whereas Respondent's web site purports to be a fan site, a cursory examination of the web site content demonstrates otherwise. See discussion below and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Section 2.5. Accordingly, the Panel finds that Respondent has no rights or legitimate interests in respect of the domain name at issue.

C. Registered and Used in Bad Faith

The Panel finds that paragraphs 4(b)(i), 4(b)(ii), and 4(b)(iii), examples of bad faith registration and use under the Policy, are not implicated by the facts of the present case. However, the Panel does find that paragraph 4(b)(iv) of the Policy is implicated. Complainant's mark is well known internationally. Respondent's repeated references to Complainant and Complainant's registered and common law mark G-UNIT demonstrates that respondent knew of the Complainant's mark and undoubtedly registered the domain name at issue to profit from the fame of Complainant's mark. It is true that Respondent refers to its web site as a "fan site" and includes at the bottom of the web page a disclaimer that it is affiliated with Complainant. However, the mere inclusion of a disclaimer does not insulate the registrant from a finding of bad faith, if other facts are present which demonstrate bad faith. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Section 3.5. Nor does a claim that something is a "fan site" automatically turn it into one.


Clearly, a user entering "www.g-unit.com" would expect to arrive at a web site operated by or otherwise approved by Complainant. Respondent's site prominently features merchandise, copyrighted material, music, videos, and photographs of Complainant and Complainant's G-Unit Group suggesting that Complainant either approves of, sanctions, or does not object to Respondent's use of the domain name. Undoubtedly, all of the merchandise and advertising featured on the web site and to the pages linked to the web site is a source of revenue to Respondent. On the other hand, none of the normal indicia of a fan site are present on this site – no independent commentary about G-Unit, no amateur photo gallery, no discussion of the hip-hop artists involved, no "gossip." Besides a bare, self-serving claim of being "an unofficial

fansite" at the bottom of the page, there is nothing to indicate to the user arriving at "www.g-unit.com" that he has arrived at a *bona fide* fan site. See *Tia Carrere v. Steven Baxt*, WIPO Case No. D2005-1072 ("The fact that the pages to which the web site are linked state that it is a fan site is self-serving, the linked pages being almost entirely commercial in nature.")

The Panel agrees with the panel in *RAI Radiotelevisione Italiana S.p.A. v. Alessandro Pescetelli*, WIPO Case No. D2002-0716, that "while use for purely a non-commercial fan site would not constitute use in bad faith, use for a *commercial* fan site does." The Panel finds that the Respondent here is using the domain name at issue to intentionally attract for commercial gain Internet users to its site by creating a likelihood of confusion with Complainant's marks as to source, sponsorship, affiliation, or endorsement of Respondent's web site. Alternatively, viewed as a commercial site, Respondent cannot bring itself within the confines of *Oki Data America, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903, because Respondent does not offer genuine G-Unit goods on its web site, and because Respondent promotes and offers for sale the products of others, including direct competitors of Complainant. Accordingly, the Panel finds that Respondent has registered and is using the domain name at issue in bad faith.

7. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <g-unit.com> be transferred to the Complainant.



Justin Hughes
Panelist



M. Scott Donahey
Presiding Panelist



Seth M. Reiss
Panelist

Dated: March 21, 2006