

EXHIBIT “B”

WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

9349-9176 Quebec Inc. and Isotim Capital Trust v. Donald Carlos Seoane / alias Don Seo / Donny Long / Donny Long Network / Donny Long Productions

Case No. D2020-0683

1. The Parties

The Complainants are 9349-9176 Quebec Inc. and Isotim Capital Trust, Canada, internally represented.

The Respondent is Donald Carlos Seoane / alias Don Seo / Donny Long / Donny Long Network / Donny Long Productions, United States of America ("US" or "United States"), self-represented.

2. The Domain Names and Registrars

The disputed domain names <bellafrenchceo.com>, <manyvidscams.com>, and <manyvids.wiki> (each individually a "Disputed Domain Name" and collectively the "Disputed Domain Names") are registered with Name.com, Inc. (Name.com LLC) and NameCheap, Inc. (the "Registrars").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 20, 2020. On March 20, 2020, the Center transmitted by email to the Registrars requests for registrar verification in connection with the Disputed Domain Names. On March 20 and 23, 2020, the Registrars transmitted by emails to the Center their verification responses confirming that the Respondent is listed as the registrant and providing the contact details. On March 24, 2020, the Center requested the Complainant amend the mutual jurisdiction section of the Complaint. On April 1, 2020, the Complainant filed an amended Complaint.

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 April 2, 2020. In accordance with the Rules, paragraph 5, the due date for Response was April 22, 2020. The Response was filed with the Center on April 13, 2020.

The Center appointed Nick J. Gardner as the sole panelist in this matter on April 20, 2020. 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

It is convenient to say at this stage that the Respondent does not appear to take issue with much of the factual material set out in the Complaint and accepts that he is the person responsible for the content of the websites linked to the Disputed Domain Names. The Panel will therefore set out in this section what appears to be accepted as the factual background.

The Complainants are related entities in a group of entities, which operate a business via a website linked to the domain name <manyvids.com>. That business is described in this decision as "manyvids.com". Given the position taken by the Respondent, it is not necessary to distinguish between the Complainants who can for practical purposes be treated as a single entity and as the owner and operator of the manyvids.com business. That business involves the provision of access to pornographic content in return for payment. That content is primarily webcam streaming content provided by individual adult "performers". The chief executive of the Complainants

is an individual whose stage name is "Bella French". It appears she enjoys some reputation as an adult entertainer or performer (see below).

Manyvids.com has over 2.4 million active members, with 300,000 unique online visitors daily, which leads to around 64 million page views per month.

Entities within the Complainants' group own registered trademarks for the term "manyvids" (for example US registration No. 5,558,426, registered on September 11, 2018) and have pending applications for the name "Bella French" (for example Canadian application 1,954,501 filed on March 29, 2019). The Complainants and/or their associated entities also claim common law rights in these trademarks. These trademarks are licensed to the Complainants.

The Respondent is an individual whose full legal name is Donald Carlos Seoane. The Respondent goes by the alias Don Seo, and carries on business under the names Donny Long, Donny Long Network, and Donny Long Productions. On December 10, 2019, the Respondent registered as a user on manyvids.com and provided manyvids.com his contact details. On December 12, 2019, the Respondent's membership of manyvids.com was terminated for alleged breaches of its terms of business. The Respondent then sent various emails to the Complainant on December 12, 13, and 14, 2019, in which he made the following statements (expletives deleted/censored):

"Ok fine I shall do back to you what you have done to me so ENJOY! Get ready cause its going to be a long haul of a lot of [] thrown all over google about you and every single member on your site. Bella you wont like what google will bring up with your name when im done I promise you. Did i mention im sue proof? LOL Lets play ball. bellafrenchrealname.com is available! LOL Better hope I dont by that and start having fun with it. You asked for this not me Bella. Your turn!"

"manyvidsleaks.com is available! ahahahaha Come on now lets have some fun. You want to kick the bull you WILL get the horns you dumb []. This is going to be fun! I will get all your members dancing over to othersites I promise you. I got nothing but time and money to make your life HELL! You started it remember that. You want libel and bully me now its your turn!"

"Well good morning and what a wonderful morning it is. I wanted to let you know each and ever morning I wake up checking my stats on all the other company accounts I make money with and do business with under someone elses name [[to keep myself sue proof]] I also will be making a new site about you. Since you are costing me money without reason as I had done nothing to you or your members when you suspended me I will find justice and cost you more and more money each day ruining your reputation myself. That 110 dollars in 1 day my account made that would have been 110 each day or more will be 1000 i cost you each day!"

Here is another new domain name for you <https://manyvids-warning.blogspot.com/>

EVERY SINGLE DAY I WILL MAKE A NEW ONE.

ALSO I SPREAD IT ALL OVER THE NET EACH TIME.

<https://pastebin.com/aGPcdaVvf>

<https://controlc.com/a3ade871>

<https://paste.ee/p/C1Mty>

<http://archive.is/8TuAy>

You know EVERYBODY in porn does good business with me because they ALL know better than to [] with me and kick the bull and get the horns but you [] and [] are just to [] stupid. Mentally ill sickos! Come sue me or face me and try to shut me up I dare you! Ill be waiting!"

And finally,

"Its live! Enjoy! <http://www.manyvids.wiki/>"

The Disputed Domain names were registered as follows: <manyvids.wiki> – registered December 14, 2019; <bellafrenchceo.com> – registered December 16, 2019; <manyvidscams.com> – registered January 4, 2020.

The Respondent launched a website linked to "manyvids.wiki" on or around December 14, 2019. It contains material that makes serious allegations about, and is highly critical of, manyvids.com's staff, users, and Bella French, as well as disseminating such content via a newsletter to anyone that signs up to the website's mailing list. On or around December 16, 2019, the Respondent launched a website linked to "bellafrenchceo.com", which contains material critical of Bella French and a link to the "manyvids.wiki" website. On or around January 4, 2020, the Respondent launched a website linked to "manyvidscams.com", which lists what purports to be a list of names of persons providing webcam content via the manyvids.com business. The only substantive text on the website reads as follows [with material said to be defamatory redacted] "Here will be a website all about ever single webcam model that chooses to support the [redacted] at Manyvids by webcamming on there [sic] live webcam site. Here will be a perfectly SEOed website with pages about each criminal with there [sic] real name and more! Manyvids is run by [allegation redacted] named Bella French real name [redacted] and [allegation redacted][name redacted]. More to come very soon! Here is a lost [sic] of criminals camming currently on MV" – there then follows a list of around 100 or so names. Most of the names are obviously pseudonyms (e.g., "NaughtyKitty93") although some names are in more conventional form and may or may not be pseudonyms.

None of the websites the Respondent has created appear to contain any advertising or commercial content although their clear intent is to seek to disparage and damage the business of the Complainants.

5. Parties' Contentions

A. Complainant

The Complainant's case can be summarized as follows.

- a) The Disputed Domain Names are each identical or confusingly similar to their "manyvids" or "Bella French" trademarks.
- b) The Respondent does not have any rights or legitimate interests in the Disputed Domain Names.
- c) The Respondent uses each of the Disputed Domain Names in bad faith by linking them to content that is untrue and which is derogatory and defamatory.

B. Respondent

The Response takes the form of an email expressed in heated and emotive terms. Essentially, the Respondent alleges that the Complainants and those involved with them are criminals engaged in unlawful activity and his websites are commenting on that activity and are noncommercial and are protected by doctrines of fair use and free speech. He says the Complaint is "fraudulent".

The Respondent says that he is within paragraph 4(c)(iii) of the Policy as he is "making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue" and includes a lengthy passage which is an extract from a blog post titled "Noncommercial and Fair Use in Rebutting Claims for Abusive Registration of Domain Names" written by a third party. This section of the Response cites a large number of previous UDRP decisions dealing with the issue of whether a noncommercial criticism website establishes a legitimate interest. Where relevant these cases are discussed below.

6. Discussion and Findings

Introduction

The Panel will preface its discussion by saying that it has no knowledge or opinion as to the original dispute between the Complainants and the Respondent, which the Complainants say led to the Respondent's membership of manyvids.com being terminated. The Panel also has no knowledge as to the truth or otherwise of any of the material contained in the websites linked to the Disputed Domain Names although that material contains a range of extremely serious allegations of various forms of criminal conduct. The Complainants allege the material is untrue and defamatory but it is not this Panel's function to determine such issues. The only issue for the Panel is whether the Respondent's registration and use of the Disputed Domain Names falls within the scope of the Policy.

Joint Complainants

The Panel accepts the Complainants' submission that for the purposes of this dispute, the interests of the Complainants are co-extensive, and their grievance against the Respondent arises from common legal interests. See [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) ("WIPO Overview 3.0"), [section 4.11](#) and panel decisions cited therein.

Substantive Matters

To succeed in respect of each Disputed Domain Name, in accordance with paragraph 4(a) of the Policy, the Complainants must satisfy the Panel that:

- (i) the Disputed Domain Names are identical with or confusingly similar to a trademark or service mark in which the Complainants have rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and,
- (iii) the Disputed Domain Names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has submitted evidence that they are the licensees of trademarks for the term "manyvids" (the "MANYVIDS trademark") and trademark applications for the name "Bella French" (the "Bella French trademark"). Whilst a pending application on its own will not generally amount to a trademark for the purposes of the policy, a common law / unregistered trademark will. See [WIPO Overview 3.0, section 1.3](#), on this issue as follows:

"1.3 What does a complainant need to show to successfully assert unregistered or common law trademark rights?"

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.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.

(Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services.)

Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning."

In the present case given the Complainants have filed evidence including in particular details of a series of media interviews and profiles which detail "Bella French's" reputation as an adult entertainer and which in the Panel's opine suffice to establish trademark rights in the term Bella French.

The Panel also considers that the Complainants status as licensees of the trademarks suffices for the purpose of this element – see [WIPO Overview 3.0 at section 1.4](#):

"Does a trademark owner's affiliate or licensee have standing to file a UDRP complaint?"

1.4.1 A trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint".

The Panel holds that each of the Disputed Domain Names <manyvids.wiki> and <manyvidsscams.com> are confusingly similar to the MANYVIDS trademark. These Disputed Domain Names, as registered by the Respondent, incorporate the MANYVIDS trademark. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy, "when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, [WIPO Case No. D2000-0662](#)). The only differences in the present case are the addition of the terms "cams" in one case. This addition does not suffice to negate the similarity between that Disputed Domain Name and the Complainant's MANYVIDS trademark (see discussion below).

It is established that, where a mark is the distinctive part of a disputed domain name, the disputed domain name is considered to be confusingly similar to the registered mark (*DHL Operations B.V. v. DHL Packers*, [WIPO Case No. D2008-1694](#)).

It is also established that the addition of a term (such as here words such as "cams") to a disputed domain name has little, if any, effect on a determination of identity or confusing similarity between that disputed domain name and the mark (*Quixtar Investments, Inc. v. Dennis Hoffman*, [WIPO Case No. D2000-0253](#)); furthermore, mere addition of a dictionary or descriptive term does not exclude potential confusion (*PRL USA Holdings, Inc. v. Spiral Matrix*, [WIPO Case No. D2006-0189](#)).

For precisely the same reasons, the Panel also concludes that the Disputed Domain Name <bellafrenchceo.com> is confusingly similar to the Complainants' Bella French mark. It simply adds the letters "ceo", an obvious abbreviation for "Chief Executive Officer", and which fails to negate the similarity.

So far as the Disputed Domain Name "manyvidsscams.com" is concerned, the Panel did pause to consider whether this was intended to be a conjoining of the terms "manyvids" and "scams" which would give rise to different considerations (especially as to the second and third elements – below). However, a conjoining of those two terms would result in the term "manyvidsscams" – although it is not inconceivable the double "s" could be replaced by a single "s" whilst retaining the same sense. However, the Panel does not think that is either the intention or the effect in this case – it seems clear the Respondent is intending the term "cams" to refer to cameras or webcams – his content on the site linked to the domain name states "Here is a lost [sic] of criminals camming currently on MV" which clearly relates to the webcam based material offered by individual members providing content via the manyvids.com business. The Panel therefore proceeds on the basis that the MANYVIDS trademark is combined with the generic term "cams" meaning cameras or webcams. In either event (the double or single "s"), the Disputed Domain Name is confusingly similar to the mark at issues and if it were used in the "scams" sense that would be dealt with under the second and third elements.

It is well established that the specific Top-Level of a disputed domain name (in this case ".com" and ".wiki") does not affect the disputed domain name for the purpose of determining whether it is identical or confusingly similar – see for example *Rollerblade, Inc. v. Chris McCrady*, [WIPO Case No. D2000-0429](#).

Accordingly, the Panel finds that each of the Disputed Domain Names is either identical or confusingly similar to the Complainant's trademarks and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy non-exhaustively lists three circumstances that demonstrate a right or legitimate interest in a domain name:

- i. before any notice to you of the dispute, your use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- ii. you (as an individual, business or other organisation) have been commonly known by the disputed domain name, even if you have acquired no trademark or service mark rights; or

iii. you are making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainants have not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Names or to use any of their trademarks. The Complainants have rights in their trademarks, which precede the Respondent's registration of the Disputed Domain Names. The Complainants have therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Names and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Names (see for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

The Respondent's case is that he falls within Policy paragraph 4(c)(iii), as he is operating *bona fide* websites seeking to draw attention to the Complainants and what he says are their unlawful activities. As noted above, the Panel has no means of determining the truth of the Respondent's views, or assessing, as the Complainant says, whether they are untrue and defamatory. It appears that the Respondent's websites are noncommercial in that they do not carry any advertising or commercial content. Whilst the Panel has considerable reservations that the content of the Respondent's websites amounts to *bona fide* criticism, it proposes to consider whether, if it assumes in the Respondent's favour that the content of his websites does amount to *bona fide* criticism, that supports a finding of legitimate interest?

In this regard, the Panel has considered the approaches set out as in relation to [section 2.6](#) in [WIPO Overview 3.0](#): "Does a criticism site support respondent rights or legitimate interests?" This states:

"As noted above, UDRP jurisprudence recognizes that the use of a domain name for fair use such as noncommercial free speech, would in principle support a respondent's claim to a legitimate interest under the Policy.

2.6.1 To support fair use under UDRP paragraph 4(c)(iii), the respondent's criticism must be genuine and noncommercial; in a number of UDRP decisions where a respondent argues that its domain name is being used for free speech purposes the panel has found this to be primarily a pretext for cybersquatting, commercial activity, or tarnishment.

2.6.2 Panels find that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark (*i.e.*, <trademark.tld> (including typos)); even where such a domain name is used in relation to genuine noncommercial free speech, panels tend to find that this creates an impermissible risk of user confusion through impersonation. In certain cases involving parties exclusively from the United States, some panels applying US First Amendment principles have found that even a domain name identical to a trademark used for a *bona fide* noncommercial criticism site may support a legitimate interest.

2.6.3 Where the domain name is not identical to the complainant's trademark, but it comprises the mark plus a derogatory term (*e.g.*, <trademarksucks.tld>), panels tend to find that the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site if such use is *prima facie* noncommercial, genuinely fair, and not misleading or false. Some panels have found in such cases that a limited degree of incidental commercial activity may be permissible in certain circumstances (*e.g.*, as 'fundraising' to offset registration or hosting costs associated with the domain name and website) [t]his section only concerns sites that practice genuine, noncommercial criticism. There are many UDRP decisions where the respondent argues that the domain name is being used for a free speech purpose but the panel finds that it is primarily a pretext for commercial advantage."

So the position is that generally panelists accept that a disputed domain name, which comprises simply the complainant's trademark alone or the trademark in combination with non-distinctive terms, is not likely to establish a legitimate interest even if it is used in relation to a criticism site. In contrast, a disputed domain name comprising the trademark in combination with a manifestly derogatory term (*e.g.*, "sucks") is likely to establish a legitimate interest if used in relation to a *bona fide* noncommercial website. However, [WIPO Overview 3.0, section 2.6.2](#), notes that in highly limited scenarios, some panelists will accept the use of the former type of disputed domain names (*i.e.*, the unadorned trademark itself) in relation to a *bona fide* noncommercial criticism website itself establishes a legitimate interest in relation to disputes between two US based entities and relying upon applicable US principles of free speech and fair use. This approach is not generally adopted by other panelists in relation to disputes where one or both parties are not US residents.

The Respondent himself noted this dichotomy in his response, which quotes liberally from a blog post titled "Noncommercial and Fair Use in Rebutting Claims for Abusive Registration of Domain Names" and which discussed this issue in detail.

In the present case, the Complainants are Canadian and the Respondent is presumably a US citizen. In these circumstances the Panel finds the general view as set out in [WIPO Overview 3.0, section 2.6.2](#), appropriate and concludes that even if the content of a website is protected by free speech principles that does not establish a legitimate interest in the disputed domain name where the disputed domain name is identical to the Complainants' trademark. The same is the case where the differences to the Complainants' trademark comprise descriptive but non-critical terms. Different considerations would apply if the disputed domain name combined the Complainants' trademark with a manifestly derogatory term. For the reasons discussed above in relation to the term "manyvidscams", the Panel does not consider that to be the case here.

The Panel therefore concludes that the Respondent's use of the Disputed Domain Names does not establish rights or legitimate interests as they do not in substance differ from the Complainants' trademarks and do not contain a manifestly derogatory term so as to indicate by their nature that they link to a criticism site.

C. Registered and Used in Bad Faith

Under the Policy paragraph 4(b)(iii) evidence of bad faith registration and use is shown if "you have registered the domain name primarily for the purpose of disrupting the business of a competitor". The Panel concludes that this may apply. The Respondent's emails of December 12, 13, and 14, 2019 (set out above) show that the Respondent was clearly intending to use the Disputed Domain Names to disrupt the Complainant's business. The precise extent to which the Respondent is a competitor of the Complainants is perhaps less

clear – it would seem clear from the content of his emails that he is in business on his own account but the Panel cannot tell whether that business competes with that of the Complainants. However, the list in paragraph 4(b) of the Policy is non-exhaustive and the Panel takes the view that a deliberate intention to damage the Complainants' business supports a finding of bad faith in the present circumstances. It seems clear that the Respondent was aggrieved by his suspension from the manyvids.com platform and set about, in his words, to "...find justice and cost you more and more money each day [sic] ruining your reputation myself". Whatever the merits or otherwise of the Respondent's dispute with the Complainants, this does not entitle him to act as he has done.

Accordingly, the Panel finds that the Disputed Domain Names have been registered and are being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(f) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Names <bellafrenchceo.com>, <manyvidscams.com>, and <manyvids.wiki> be transferred to the Complainant.

Nick J. Gardner
Sole Panelist
Date: May 4, 2020