

ADMINISTRATIVE PANEL DECISION

Strategic Armory Corps, LLC v. Lucas Harper, aretesteroids
Case No. D2023-1349

1. The Parties

Complainant is Strategic Armory Corps, LLC, United States of America (“United States” or “U.S.”), represented by Greenspoon Marder, LLP, United States.

Respondent is Lucas Harper, aretesteroids, United States.

2. The Domain Name and Registrar

The disputed domain name <armalitefirearms.com> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2023. On March 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 29, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the initial named Respondent (PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to Complainant on March 31, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 6, 2023.

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 Respondent of the Complaint, and the proceedings commenced on April 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 5, 2023.

The Center appointed John C. McElwaine as the sole panelist in this matter on May 10, 2023. 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

Complainant is a United States-based manufacturer of firearms and firearms-related products. Relevant to this matter, Complainant owns U.S. Trademark Registrations Nos. 661,814, registered on May 20, 1958; 6,568,204 registered on November 23, 2021; and 6,568,207 registered on November 23, 2021 for the trademark ARMALITE reciting firearms and firearm-related products (collectively, these trademark registrations are referred to herein as the “ARMALITE Mark”).

The Domain Name was registered by Respondent on September 25, 2021. At the time of the filing of the Complaint, the Domain Name resolved to a website purporting to be an “Armalite Firearms Store.”

5. Parties’ Contentions

A. Complainant

As background, Complainant alleges that it has used the ARMALITE Mark since at least as early as 1955 in connection with firearms and firearm-related products. In particular, Complainant contends that due to extensive promotion and advertising over the last seven decades, the ARMALITE Mark has achieved widespread recognition and renown and is synonymous with popular, high quality firearms, including modern sporting rifles. Complainant alleges that it advertises ARMALITE products on its website located at <armalite.com>.

As to the first element of the Policy, Complainant alleges that it has valid and existing trademark rights in the ARMALITE Mark by virtue of its United States registrations and that the Domain Name contains Complainant’s ARMALITE Mark with the addition of the descriptive term “firearms.”

As to the second element of the Policy, Complainant contends that it did not authorize or license Respondent to register or use the Domain Name and that Complainant is not commonly known by the Domain Name. Furthermore, Complainant asserts that Respondent will not be able to show that its use of the Domain relates to a *bona fide* offering of goods or services, or that Respondent is making legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain. Complainant points out that the Domain Name purports to be an online store and offers multiple methods to contact Complainant all of which are fabricated. For instance, Complaint alleges that the “Contact” page invites visitors to “contact us” at a fake email address, “[...]@armalitefirearmstore.com”, or by submitting a name, email address, and message and that the “My Account” page encourages website visitors to “register” with an email name and a password. Complainant also provides evidence that Respondent has been involved in at least two nearly-identical schemes in which they registered websites impersonating entities in the firearms industry.

As to the third element of the Policy, Complainant asserts that Respondent registered and used the Domain Name solely for the purpose of attracting Internet users to its website by creating a likelihood of confusion with ARMALITE’s website and misleading visitors to believe they are on ARMALITE’s homepage. Complainant alleges that Respondent’s purpose of registration and use of the Domain Name was to either disrupt or create confusion for Complainant’s business in bad faith.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. Anonymous Speech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel's findings on each of the above cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant show that the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2. On this point, Complainant has provided evidence that it is the owner of three United States trademark registrations for the ARMALITE trademark.

It is well-established that the addition of other terms to a trademark in a domain name does not avoid a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."); *Mastercard International Incorporated v. Dolancer Outsourcing Inc.*, WIPO Case No. [D2012-0619](#); *Air France v. Kitchkulture*, WIPO Case No. [D2002-0158](#); *DHL Operations B.V., and DHL International GmbH v. Diversified Home Loans*, WIPO Case No. [D2010-0097](#). In this matter, the Domain Names contains Complainant's ARMALITE Mark in its entirety, as the dominant element, followed by the terms "fire arms". The addition of the terms "fire arms" do not avoid a finding of confusing similarity between the Domain Name and the ARMALITE Mark.

Accordingly, the Panel finds that the Domain Name is confusingly similar to Complainant's ARMALITE Mark in which Complainant has valid trademark rights. Therefore, Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant need only make a *prima facie* showing on this element, at which point the burden shifts to Respondent to present evidence that it has some rights or legitimate interests in the Domain Name. If Respondent has failed to do so, Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

Complainant asserts that Respondent is not authorized to have registered the Domain Name and allegedly set up a website that purports to be an online store for Complainant's products. In addition, Complainant has alleged that the website provides incorrect contact information for Complainant and seeks visitors to supply their own private contact information. Although properly notified by the Center, Respondent failed to submit any response to legitimize these concerning points. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the Domain Name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic. A. S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the disputed domain name. See *AREVA v. St. James Robyn Limoges*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#).

Nevertheless, under paragraph 4(c) of the Policy, a respondent's rights or legitimate interests to a domain name may be established by demonstrating any of the following three conditions: (i) before any notice to respondent of the dispute, respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or (ii) respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if respondent has acquired no trademark or service mark rights; or (iii) respondent 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. The Panel finds that Respondent will not be able to show rights or legitimate interests under any of the three conditions.

As an initial matter, Respondent cannot satisfy paragraph 4(c)(ii) of the Policy. There is no evidence in the record that Respondent is commonly known by the name "Armalite Firearms."

Complainant also asserts that the Domain Name resolved to a website that suggests that it is affiliated with or sponsored by Complainant. For instance, the website claims:

Founded in 1954 by Fairchild Engine and Airplane Corporation, ArmaLite is best known as the originator of the AR-10™ and AR-15 platform firearms. Today, ArmaLite is owned by Strategic Armory Corps. Comprised of a diverse group of individuals from a multitude of backgrounds; however, Armalite exhibits the highest level of commitment to innovation, product development, and customer service for the firearms industry. As we proudly celebrate over 60 years of innovation that dates back to the rifle that developed into the largest single market segment of the sporting industry, the Modern Sporting Rifle (MSR), we are focused on ArmaLite building high-quality, innovative, and dependable firearms for the American people.

In addition, Complainant asserts that this website may be used to harvest sensitive information from unsuspecting Internet visitors trusting the website due, in part, to its use of the ARMALITE Mark and the website's claim to be Complainant. Respondent has not submitted any response to rebut or explain these facts and contentions.

The Panel finds that the use of the Domain Name in this manner to divert Internet traffic or to confuse and deceive the Internet users is not a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy. Prior UDRP panels deciding this issue have held that such use of a domain name cannot be a "*bona fide* offering of goods or services" and is not "fair use of the domain name". See *Microsoft Corporation v. Microsof.com aka Tarek Ahmed*, WIPO Case No. [D2000-0548](#) ("by using a domain name and establishing a website deliberately designed to confuse Internet users and consumers regarding the identity of the seller of the goods and services, Respondent has not undertaken a *bona fide* or good faith offering of the goods and services."); see *Hulu, LLC v. Helecops, Vinod Madushanka*, WIPO Case No. [D2016-0365](#) (finding that an infringing website operating under the name "HuluMovies" does not entail a *bona fide* offering of services in the sense of paragraph 4(c)(i) of the Policy, nor a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii), without intent for commercial gain to misleadingly divert consumers or to tarnish the HULU mark.). Without a response from Respondent justifying its use of the Domain Name as authorized by Complainant or as fair use, the Panel cannot find Respondent has a legitimate interest.

Moreover, to the extent the Domain Name was registered to engage in an information harvesting scheme, such use would not be a *bona fide* offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”); see also, *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name holding, “such phishing scam cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”). The undisputed evidence of impersonation, deception, and fraud nullifies any possible basis for the acquisition of rights or legitimate interests by Respondent. See *Afton Chemical Corporation v. Meche Kings*, WIPO Case No. [D2019-1082](#).

In sum, Complainant has made a *prima facie* showing of Respondent’s lack of rights or legitimate interests and Respondent has failed to come forward to rebut that showing. As provided for by paragraph 14 of the Rules, the Panel may draw such inference from Respondent’s default as it considers appropriate. For all these reasons, the Panel is entitled to accept that the second element of the Policy is established by Complainant, and Respondent has no rights or legitimate interests in respect of the Domain Name, pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can be found where a respondent “knew or should have known” of a complainant’s trademark rights and nevertheless registered a domain name in which it had no right or legitimate interest. See *Accor S.A. v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). As detailed above, Respondent registered the Domain Name, which is confusingly similar to the ARMALITE Mark, and has used the ARMALITE Mark on the website to assert that it is Complainant. There is no explanation for Respondent to have chosen to register the Domain Name other than to intentionally trade off the goodwill and reputation of Complainant’s trademarks or otherwise create a false association with Complainant. With no response from Respondent, such a claim of bad faith registration is undisputed.

Also as discussed herein, Respondent registered the Domain Name and linked it to a website using Complainant’s ARMALITE Mark purporting to be the “Armalite Firearms Store”, providing false contact information for Complainant and seeking to collect information from users. Such use is in bad faith because Respondent is using the Domain Name to attract, for commercial gain, Internet users to Respondent’s website by creating a likelihood of confusion with the ARMALITE Mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. *Philip Morris USA Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Raph Lionnel Noundjeu*, WIPO Case No. [D2020-0556](#) (finding that given that the disputed domain name incorporates the Complainant’s trademark (and a third-party’s trademark) and the website operated under the disputed domain name displays Complainant’s trademarks, logo, and images that respondent intended to attract Internet users accessing the website corresponding to the disputed domain name <marlboro-newport.com> who may be confused and believe that it is a website held, controlled by, or somehow related to or endorsed by the complainant, for its commercial gain). Thus, the Panel holds that Complainant has met its burden of providing sufficient evidence that Respondent registered and is using the Domain Name in bad faith under paragraph 4(b)(iv) of the Policy.

For these reasons, the Panel holds that Complainant has met its burden of showing that Respondent registered and is using the Domain Name in bad faith under paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <armalitefirearms.com>, be transferred to Complainant.

/John C. McElwaine/

John C. McElwaine

Sole Panelist

Date: May 24, 2023