

ADMINISTRATIVE PANEL DECISION

Sniffies, LLC v. Polo Kem
Case No. D2023-1532

1. The Parties

The Complainant is Sniffies, LLC, United States of America, represented by Hanson Bridgett LLP, United States of America (“U.S.”).

The Respondent is Polo Kem, Kazakhstan.

2. The Domain Name and Registrar

The disputed domain name <sniffies.fun> (the “Disputed Domain Name”) is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 6, 2023. On April 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent (Whois Privacy / Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 12, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 12, 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 the Respondent of the Complaint, and the proceedings commenced on April 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 8, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on May 17, 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

The Complainant, Sniffies, LLC, is a provider of online platforms and is based in Dover, Delaware, U.S. Since at least February 2017, the Complainant has offered an online dating and social meetup Progressive Web App (PWA) platform under the brand SNIFFIES, available at "www.sniffies.com".

The Complainant owns several trademarks for SNIFFIES, including the following:

- SNIFFIES, International word mark registered under No. 1637832 on November 5, 2021, for services in classes 9, 38, 42 and 45;
- SNIFFIES, U.S. word mark registered under No. 6820819 on January 11, 2022, for services in classes 38, 42 and 45.

The Disputed Domain Name was registered on February 14, 2023. According to the Complainant's evidence, the Disputed Domain Name appeared to be mentioned and promoted in messages sent on the Complainant's own platform, and appeared to redirect to at least one website offering services similar to the Complainant's services. The Disputed Domain Name currently redirects to the domain name <saveukraineua.org>, which appears to resolve to the website of a charitable foundation helping people who are displaced because of the war in Ukraine.

5. Parties' Contentions

A. Complainant

In summary, the Complainant considers the Disputed Domain Name to be identical to trademarks in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant:

- the Respondent is not known by the Disputed Domain Name nor could have developed any common law trademark rights;
- the Respondent has not been authorized by the Complainant to use the SNIFFIES trademarks, or any domain name incorporating them;
- the Respondent has employed the Disputed Domain Name as part of a fraudulent scheme to impersonate the Complainant on the Complainant's own SNIFFIES platform and deceive the Complainant's users into visiting the Disputed Domain Name under the deliberately mistaken assumption that the Disputed Domain Name is associated with or controlled by the Complainant. The Disputed Domain Name redirects to other domain names, including ones resolving to websites that appear to be competing with the Complainant's official website and platform. The Respondent's conduct is *prima facie* evidence that the Respondent has no rights or legitimate interests in the Disputed Domain Name and cannot be considered as a legitimate or fair use of the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. In the Complainant's view, the Respondent was clearly aware of the Complainant and its prior trademark rights, as the reputation and renown of the Complainant was instrumental to the Respondent's

deceptive scheme. The Complainant claims that the Respondent registered and used the Disputed Domain Name in a deliberate attempt to deceive third parties as to the Respondent's identity or connection with the Complainant, in order to disrupt the Complainant's legitimate business by misdirecting its customers through deceit.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

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

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that it has rights in the SNIFFIES trademark, which has been registered and used in connection with the Complainant's online dating and social meetup services.

The operative element of the Disputed Domain Name is identical to the Complainant's SNIFFIES mark.

The only additional element in the Disputed Domain Name is the generic Top-Level Domain ("gTLD") suffix (".fun"). As a technical requirement of registration, this element is generally disregarded in the comparison between a domain name and a trademark for the purposes of the first element of the Policy (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.11).

Therefore, the Panel finds that the Disputed Domain Name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make out a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “Polo Kem”. The Respondent’s use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists or existed.

Fundamentally, a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant’s mark is often central to this inquiry. Where a domain name is identical to a complainant’s trademark, UDRP panels have largely held that it carries a high risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)). The operative part of the Disputed Domain Name is identical to the Complainant’s SNIFFIES mark. Moreover, the Panel agrees with the Complainant that consumers are likely to perceive the addition of the gTLD “.fun” as evocative or suggestive of Complainant’s dating services. Therefore, the Panel finds that the Disputed Domain Name carries a high risk of implied affiliation cannot constitute *bona fide* or even fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

In the Panel’s view, there is no indication of any legitimate noncommercial or fair use of the Disputed Domain Name, quite the contrary.

Although it is difficult to have a clear view on which websites were linked to the Disputed Domain Name due to the various redirections, the Panel finds that it can be reasonably inferred from the Complainant’s evidence that the Disputed Domain Name used to refer to at least one website offering services similar to the Complainant’s services. Moreover, the Complainant provides evidence of a message posted on its own platform. This message mentions the Disputed Domain Name together with an image used on the Complainant’s own website and text inviting the recipient to “check out our new gay portal”. The Panel finds that in the circumstances of this case, such message mentioning the Disputed Domain Name can be reasonably linked to the Respondent.

The fact that the Disputed Domain Name currently appears to redirect to a website of a charitable foundation does not show rights or legitimate interests in the Disputed Domain Name, as the Panel finds no link between this website and the term “sniffies” covered by the Complainant’s mark.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name. The Disputed Domain Name is identical to the Complainant's trademark and, as mentioned above under section 6.B, the Disputed Domain Name appeared to be mentioned and promoted in messages sent on the Complainant's own platform and also appeared to redirect to at least one website offering services similar to the Complainant's services.

In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

Given the circumstances as described above, the Panel finds that the use of a domain name identical to the Complainant's mark indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark.

By failing to provide a substantive response to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element 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 Disputed Domain Name <sniffies.fun> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: June 1, 2023