

ADMINISTRATIVE PANEL DECISION

Waterdrop Microdrink GmbH v. Tyra Robel

Case No. D2023-4335

1. The Parties

The Complainant is Waterdrop Microdrink GmbH, Austria, represented by Anna Smehlik, Austria.

The Respondent is Tyra Robel, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <waterdropvip.com> is registered with Sav.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 18, 2023. On October 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 19, 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 (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 23, 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 amendment to the Complaint on October 27, 2023.

The Center verified that the Complaint together with the amendment to the 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 October 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 29, 2023.

The Center appointed Federica Togo as the sole panelist in this matter on December 6, 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

It results from the Complainant's undisputed allegations that it is a global company with its seat in Austria which sells and distributes its products: Waterdrop Microdrinks, Microlyte, Microenergy in cube form with natural fruit and plant extracts (to dissolve in water) as well as sustainable glass and steel bottles. It is a multi-channel company which sells and distributes its products also online via web-shops using the following domain names: <waterdrop.de> (registered and owned by the Complainant on February 27, 2020), <waterdrop.com>, <waterdrop.nl>, <waterdrop.es>, <waterdrop.fr>, <waterdrop.it>, <en.waterdrop.com>, <eu.waterdrop.com>, <waterdrop.sg>, and <unternehmen.waterdrop.com>.

The Complainant is the registered owner of many trademarks worldwide for WATERDROP, in particular European Union trademark registration no. 018464543 WATERDROP (word) registered on August 14, 2021, for goods and services in classes 9 and 41 and International trademark registration no. 1509285 WATERDROP (word) registered on November 29, 2019, for goods in classes 20 and 21 and designating amongst others United of States, where the Respondent is located.

The disputed domain name was registered on June 19, 2023. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a website purportedly offering for sale products under the Complainant's trademarks, displaying the Complainant's trademark, logo, and products images and the address given in the "Contact Us" section is the same as the current location of a retail outlet operated by a subsidiary of the Complainant (Waterdrop Microdrinks LLC), thus somehow referring to the Complainant and its address. Furthermore, the undisputed evidence provided by the Complainant proves that on August 16, 2023, it made an order in relation to a product offered for sale on the website and received - after the payment - an order confirmation email; however, the product was never delivered.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark since it contains its trademark WATERDROP entirely.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the website to which the disputed domain name resolved looks almost identical to the Complainant's website under the domain name <waterdrop.de>. Entering the website at the disputed domain name, the customers have the impression that they entered a website of the Complainant. In addition, it gives the wrong impression that the shown Complainant's products can be effectively purchased on that website. On this regard, the Complainant has made a trial order on August 16, 2023, and received - after payment - an order confirmation email; however, it has not received any products. Therefore, the Respondent deliberately deceives customers about his identity and the products allegedly sold on the website. The website exists only to deceive customers and thus obtain money through fake orders.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the disputed domain name is used for the solely purpose of misleading customers who want to buy products from the Complainant and therefore unintentionally visit the website associated with the disputed domain name. Ultimately, however, the customers will never receive products that they ordered and paid through the website at the disputed domain name. As the customers have the impression that the website belongs to the Complainant, it creates a bad image of the Complainant as the customers do not receive their orders even though they already paid for them.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (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 proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here “vip”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Moreover, the Panel notes that the disputed domain name contains the Complainant's registered trademark WATERDROP and that given the affiliated content of the disputed domain name, namely a website allegedly offering the Complainant's trademark products and indicating the same address of a retail outlet operated by a subsidiary of the Complainant, thus somehow referring to the Complainant, the Panel finds it clear that the Respondent registered the disputed domain name with the intention to take advantage of the Complainant's reputation by registering a domain name containing the Complainant's trademark with the intent to attract Internet users for commercial gain.

In addition, it results from the undisputed evidence before the Panel, that the website to which the disputed domain resolved has been used to allegedly offer for sale the Complainant's goods in order to extort money at the end (without delivering the ordered goods). The Panel considers the evidence as sufficient to support the Complainant's credible claim of illegal activity by the Respondent.

Panels have held that the use of a domain name for illegal activity here (e.g., impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolves to a website displaying the Complainant's trademark, logo, and products images, and purportedly offering for sale products under the Complainant's trademark and indicating the same address of a retail outlet operated by a subsidiary of the Complainant, thus somehow referring to the Complainant. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

On this regard, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

(i) the nature of the disputed domain name (a domain name incorporating the Complainant's mark plus the addition of the term "vip");

(ii) the content of the website to which the disputed domain name directs, displaying the Complainant's trademark, logo, and products images, and purportedly offering for sale products under the Complainant's trademark and indicating the same address of a retail outlet operated by a subsidiary of the Complainant, thus somehow referring to the Complainant;

(iii) a clear absence of rights or legitimate interests coupled with no response for the Respondent's choice of the disputed domain name.

Finally, panels have held that the use of a domain name for illegal activity (here impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third 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 <waterdropvip.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: December 20, 2023