

ADMINISTRATIVE PANEL DECISION

Allstar Marketing Group, LLC v. Aland Aziz, HYPACKS
Case No. DCO2022-0100

1. The Parties

The Complainant is Allstar Marketing Group, LLC, United States of America (“United States” or “U.S.”), represented by Kane Kessler, PC, United States.

The Respondent is Aland Aziz, HYPACKS, Sweden.

2. The Domain Name and Registrar

The disputed domain name <snuggies.co> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 16, 2022, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 21, 2022, 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 November 21, 2022.

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 December 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on January 16, 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 is a U.S. Corporation. It sells via its website linked to the domain name <snuggiesstore.com> a range of fleece blankets and related goods. These are marketed under the brand name SNUGGIE. The Complainant owns various trademarks for the term SNUGGIE – see for example U.S. Trademark Registration No. 4418776 dated October 15, 2013. These trademarks are referred to in this decision as the “SNUGGIE trademark”.

The Disputed Domain Name was registered on January 1, 2021. It does not now resolve to an active website but the filed evidence shows it was previously linked to a website (the “Respondent’s Website”) which uses the Complainant’s SNUGGIE trademark to give the impression it is a genuine website of the Complainant. It offers for sale what purports to be a range of SNUGGIE branded products which the Complainant says are fakes.

5. Parties’ Contentions

A. Complainant

The Complainant’s can be summarized as follows.

The Disputed Domain Name is confusingly similar to the SNUGGIE trademark. It differs only in the addition of the letter “s”.

The Respondent does not have any rights or legitimate interests in the Disputed Domain Name.

The Respondent has registered and used the Disputed Domain Name in bad faith. The Complainant says the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by use of a domain name confusingly similar to the Complainant’s SNUGGIE trademark. It says the Respondent has unfairly tried to take advantage of the SNUGGIE trademark. It says the products offered for sale on the Respondent’s Website are counterfeit and through that website falsely identified and labeled as “ALLSTAR” goods. The Panel notes that the goods on the Respondent’s Website purport to be branded “Snuggie” goods (Annex 5 of the Complaint).

B. Respondent

No Response has been filed. However on October 6, 2022 in reply to a “cease and desist” letter from the Complainant’s representatives the Respondent sent an e mail which stated as follows:

“Hi Randi,
Hope you are doing well. I checked your trademarked names and Snuggies (our name) was not one of them. If you would like us to change our name we can negotiate a deal. It is not in our interest to change our name but might consider it if there is a good amount of money being offered. How much are you willing to pay for us to change our name?”

Best regard, Anthony from Snuggies.”

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Substantive Matters

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three following elements in respect of the Disputed Domain Name:

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

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the SNUGGIE trademark. The Panel finds the Disputed Domain Name is confusingly similar to the SNUGGIE trademark. The Disputed Domain Name simply adds an additional letter “s” to that trademark. The Panel agrees in this regard with the approach set out in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, namely:

“1.7 What is the test for identity or confusing similarity under the first element?

[...]

While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

Accordingly the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

It is also well established that the Top-Level Domain (“TLD”), in this case “.co”, 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 the Disputed Domain Name is confusingly similar to the Complainant’s trademark 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 domain name or a name corresponding to the 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 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 domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

None of these apply in the present circumstances. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the SNUGGIE trademark. The Complainant has prior rights in the SNUGGIE trademark which precede the Respondent’s registration of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce relevant evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (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 Panel finds that the Respondent has failed to produce any evidence to establish any rights or legitimate interests in the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances, the Panel concludes that the Respondent chose to register a name confusingly similar to the Complainant’s SNUGGIE trademark in order to facilitate a business where the Respondent’s Website could offer for sale goods which purport to be branded “Snuggie” goods. Manifestly the choice of a confusingly similar name was not coincidental. Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

In the present circumstances the Panel agrees with the Complainant that factor (iv) applies as the Respondent was seeking to attract customers by creating a likelihood of confusion with the Complainant's SNUGGIE trademark. The Respondent's Website masquerades as a website operated by or with the authority of the Complainant when that is not the case. The Disputed Domain Name is clearly intended to assist in that deception. Factor (i) may also apply given the content of the Respondent's email of October 6, 2022 (see above). The Panel also notes that the Respondent has not filed a Response and hence has not availed itself of the opportunity to present any case of good faith that it might have. The Panel infers that none exists. In reaching this finding the Panel does not need to reach a conclusion as to whether the goods the Respondent is offering for sale are counterfeit or not. Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4 of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name <snuggies.co>, be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: January 30, 2023