

ADMINISTRATIVE PANEL DECISION

Gift Services, Inc. d/b/a GiftTree v. Igiftree / sandy xu
Case No. D2022-1361

1. The Parties

The Complainant is Gift Services, Inc. d/b/a GiftTree, United States of America (“U.S.”), represented by Husch Blackwell LLP, U.S.

The Respondent is Igiftree, China / sandy xu, U.S.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 15, 2022. On April 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 20, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 2, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant did not file an amended Complaint.

The Center verified that 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 May 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 10, 2022.

The Center appointed Martin Schwimmer as the sole panelist in this matter on June 28, 2022. 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 has sold gift baskets, such as wine, food, or floral arrangements, under the trademark GIFT TREE since 1999. It operates an ecommerce website at “www.gifftree.com”. It owns U.S. trademark registration no. 507911 for GIFTTREE for mail order and online retail services featuring various types of gifts. It also owns the domain name <gifttree.com> which resolves to “www.gifftree.com”.

The Registrant registered the Disputed Domain Name on June 9, 2019. It has operated what purports to be an ecommerce website offering various types of gifts at “www.igifftree.com” and now resolves to a pay per click site, and may rotate based on user location.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the Disputed Domain Name is confusingly similar to its registered GIFT TREE trademark in that (1) the “i” prefix is not distinctive in the context of online services, as it is an abbreviation for “Internet” or “information”; and (2) the “gifttree” element is an intentional misspelling of its GIFTTREE trademark. Accordingly, the Disputed Domain Name is confusingly similar to the Complainant’s prior trademark.

Additionally, the Respondent cannot demonstrate rights or legitimate interests in the Name. First, its virtually identical name creates a risk of implied affiliation with the Complainant. Furthermore, the Complainant has no relationship with the Respondent, and has never received license, permission, or authorization to use the Complainant’s trademark. Additionally, the Respondent must have been aware of the Complainant, as the Complainant has been using its trademark for twenty years, and the Respondent has adopted a virtually identical name for remarkably similar goods and services.

The Complainant also notes that published reviews of the Respondent’s website on the Respondents’ Facebook page suggest that the Respondent does not fulfill orders and does not provide adequate customer service. Third-party review sites simply assert that the Respondent’s website may well be a scam.

There have been incidents of actual confusion, as the Complainant has received complaints relating to orders place on the Respondent’s website.

The Respondent registered and used the Disputed Domain Name in bad faith. It could not have adopted a name virtually identical to that of one the Complainant had been using for similar services for twenty years. The incidents of actual confusion establish that the Respondent has registered and used the Name in order to divert traffic from or otherwise disrupt the business of the Complainant, and to trade off the reputation of the Complainant’s trademark.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated its ownership of the trademark GIFTTREE through its U.S. registration no. 5079111. It demonstrated use of its trademark through its website at “www.gifftree.com”. (As noted by the Complainant, the “i” prefix is not distinctive in the context of online services, as it is an abbreviation for “Internet” or “information”.)

The Panel further notes that the string “gifttree” does not constitute a recognizable word. For example, the Google search engine, when searching for the string, indicates that it is “[s]howing results for gifftree” instead. Additionally, the Complainant has registered the domain name <gifttree.com> which resolves to its “www.gifftree.com” website. This registration from 1996 (missing a letter “t”) was presumably a precaution against the mistyping of <gifftree.com> and is evidence of the Complainant’s sincere belief in the similarity of the two strings.

The Panel concludes that in the absence of evidence or argument from the Respondent, the Complainant’s mark plainly being recognizable in the Disputed Domain Name, the Disputed Domain Name is confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Complainant has demonstrated that it owns the GIFTTREE trademark and that it has not granted the Respondent any right to use the trademark. The Complainant further alleges that the Respondent has not been commonly known by, nor acquired trademark rights in, the GIFTTREE mark.

The Complainant asserts that the Respondent’s ecommerce site cannot constitute a *bona fide* offering of goods and/or services because the Respondent knowingly adopted a confusingly similar name to offer competitive services. Additionally, the published customer reviews on the Respondent’s Facebook page, suggests that the Respondent does not fulfill orders nor provide adequate customer service. These reviews raise the question as to whether the Respondent provides gift services at all, or whether its website is a pretense for some sort of fraudulent behavior trading off of the Complainant’s reputation and goodwill.

The Respondent has not responded. The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights to or legitimate interests in the Disputed Domain Name, which case has not been rebutted by the Respondent. Therefore, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant has submitted evidence that its GIFTTREE mark, after twenty years of use, is sufficiently established such that, coupled with the absence of any other evidence in the record to the contrary, it is fair to presume that the Respondent registered the Disputed Domain Name with prior knowledge of the Complainant’s rights, and uses the Name for competitive or highly related gift services. This presumption is also supported by the fact that the Respondent chose a name that is confusingly similar to the Complainant’s established trademark.

Furthermore, the Complainant has submitted evidence, in the form of complaints from purported users relating to unfulfilled orders and inadequate customer service, which cast doubt on whether the Respondent’s website is even an operated as an actual ecommerce site, or is a pretense for some type of fraudulent activity trading off of the Complainant’s reputation and goodwill.

There have been incidents of actual confusion where the Complainant has received complaints from customers who attempted to place orders with the Respondent’s website, thinking that they had ordered from the “gifftree.com” site.

Finally, the Panel may also draw negative inferences against the Respondent from its default.

Considering all these factors, the Panel finds that the Complainant has established that the Disputed Domain Name was registered and is being used in bad faith so as to trade off the reputation of the Complainant's trademark, as outlined in 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 Disputed Domain Name <igiftree.com> be transferred to the Complainant.

/Martin Schwimmer/

Martin Schwimmer

Sole Panelist

Date: July 14, 2022