

ADMINISTRATIVE PANEL DECISION

Clopay Corporation v. Hulmiho Ukolen Registrant, Poste restante Case No. D2023-3934

1. The Parties

The Complainant is Clopay Corporation, United States of America, represented by Dinsmore & Shohl LLP, United States of America.

The Respondent is Hulmiho Ukolen Registrant, Poste restante, Finland.

2. The Domain Name and Registrar

The disputed domain name <cloplay.com> is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2023, in relation to three domain names including the disputed domain name. On September 21, 2023, the Center transmitted by email to the concerned registrars including the Registrar a request for registrar verification in connection with the domain names. On September 21 and 22, the concerned registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the domain names which differed from the named Respondent (with respect to the disputed domain name, WHOIS PROTECTION) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 25, 2023, providing the registrant and contact information disclosed by the concerned registrars, and inviting the Complainant to submit an amendment to the Complaint adding the registrar-disclosed registrants as formal Respondents and provide relevant arguments or evidence demonstrating that all named registrants are, in fact, the same entity and/or that all domain names are under common control; and/or indicate which domain names will no longer be included in the current Complaint. The Complainant filed an amended Complaint on September 29, 2023.¹

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”).

¹ The Complainant removed two domain names from the Complaint upon receipt of the Center’s email regarding multiple underlying registrants.



In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 26, 2023.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on November 3, 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 door manufacturer, with presence in the United States of America and Canada.

The Complainant is the owner of several trademark registrations in United States of America, among others, the following:

Trademark	No. Registration	Jurisdiction	Date of Registration
	1774905	United States of America	June 08, 1993
	1775234	United States of America	June 08, 1993
CLOPAY	1775235	United States of America	June 08, 1993

The Complainant is the owner of the domain names <clopaydoor.com> and <clopaydoors.com>, both of which resolve to the website where the Complainant showcases its door business. The Complainant is also the owner of the domain names <clopay.com> and <myclopay.com>, both of which resolve to the same website, and which are also used in connection with the Complainant's business.

The disputed domain name was registered on December 25, 2007. The disputed domain name currently and at filing of the Complaint resolves to a parked website containing pay-per-click links to websites that offer similar products to those of the Complainant. Furthermore, the disputed domain name was listed on the Afternic.com website as being for sale with a "Buy Now" price of USD 36,999, and a suggested offer price of USD 12,999 minimum.

5. Parties' Contentions

A. Complainant

The Complainant argued the following:

I. Identical or Confusingly Similar

That the disputed domain name is confusingly similar to the Complainant's CLOPAY trademark.

That the disputed domain name is essentially identical to the Complainant's trademark, except for the fact that the "pay" component has been replaced with the misspelled term "play."

That a reasonable Internet user would assume that the disputed domain name is somehow affiliated with the Complainant.

II. Rights or Legitimate Interests

That the Respondent is not commonly known by the disputed domain name or any portion thereof.

That there is no indication that the Respondent has registered the disputed domain name as a trademark.

That the Complainant has not assigned or transferred any rights regarding its CLOPAY trademark to the Respondent, nor has it granted permission to the Respondent to use or register its trademark as a domain name.

That the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

III. Registered and Used in Bad Faith

That the Respondent had actual knowledge of the Complainant's rights in its CLOPAY trademarks prior to registering the disputed domain name.

That the Respondent is using the disputed domain name in hopes of attracting users to its various web sites for commercial gain, since the disputed domain name resolves to a parked website containing links to websites that offer similar products to those of the Complainant, as well as installation services thereof.

That the Respondent's offer to sell the domain name at a price far in excess of its out-of-pocket costs is a sign of bad faith.

That the Respondent has engaged in a pattern of bad faith conduct by registering numerous domain names involving variations on well-known brands.

B. Respondent

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

6. Discussion and Findings

Given the Respondent's failure to submit a formal response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations under paragraphs 5(f), 14(a), and 15(a) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#), and *Encyclopaedia Britannica, Inc. v. null John Zuccarini, Country Walk*, WIPO Case No. [D2002-0487](#)).

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 for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the disputed domain name is confusingly similar to the CLOPAY trademark since said disputed domain name includes it entirely, with the addition of the letter "i" between the "p" and "a" in "pay".

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.

While 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 often impossible 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 domain name. 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 record, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights to or legitimate interests in the disputed domain name. The Complainant has asserted that there is no evidence of the Respondent’s use of the disputed domain name in connection with a *bona fide* offering of goods or services, and that the Respondent has not been licensed or otherwise permitted by the Complainant to use the CLOPAY trademark, or to register the disputed domain name (see *Amdocs Development Ltd. and Amdocs Software Systems Ltd. v. cenk erdogan*, WIPO Case No. [D2023-3044](#); *Amdocs Development Ltd. and Amdocs Software Systems Ltd. v. Nick Lamba*, WIPO Case No. [D2023-2573](#) and *Autodesk, Inc. v. Brian Byrne, meshIP, LLC*, WIPO Case No. [D2017-0191](#)). The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights to or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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.

The Complainant has ascertained its rights over the CLOPAY trademark. The dates of registration of the Complainant’s trademarks significantly precede the date of registration of the disputed domain name.

The disputed domain name resolves to a parked website comprising pay-per-click links related to the Complainant’s business, which suggests that the Respondent is trying to capitalize on the reputation and goodwill of the Complainant’s trademark by misleading Internet users, for commercial gain, to the disputed domain name by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, which constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#), see also *Fontem Holdings 4, B.V. v. J- B-, Limestar Inc.*, *supra*; *ArcherDaniels-Midland Company v. Wang De Bing*, *supra*, and *Merck Sharp & Dohme Corp. v. Domain Administrator, PrivacyGuardian.org / George Ring, DN Capital Inc.*, *supra*).

Another indicator of bad faith is the pattern of cybersquatting in which the Respondent has been involved (see *La Plateforme v. Hulmiho Ukolen, Poste restante*, WIPO Case No. [D2023-3404](#); *Equifax Inc. v. Hulmiho Ukolen, Poste restante*, WIPO Case No. [D2022-4429](#); *Aldi GmbH & Co. KG and Aldi Stores Limited v. Hulmiho Ukolen, Poste restante* WIPO Case No. [D2022-4285](#); *Aldi GmbH & Co. KG, Aldi Stores Limited v. Whois protection, this company does not own this domain name s.r.o / Hulmiho Ukolen, Poste restante*, WIPO Case No. [D2022-3480](#); *Camelot UK Bidco Limited, Clarivate Plc, MarkMonitor Inc. v. Hulmiho Ukolen, Poste restante* WIPO Case No. [D2022-3449](#); *ISS World Services A/S v. Hulmiho Ukolen*

WIPO Case No. [D2022-2762](#); *Federation Francaise De Tennis (FFT) v. Domain Admin, Whois protection, this company does not own this domain name s.r.o. / Hulmiho Ukolen, Poste restante* WIPO Case No. [D2022-1855](#); *Toyota Motor Sales, U.S.A., Inc. v. Domain Admin, Whois protection, this company does not own this domain name s.r.o. / Hulmiho Ukolen, Poste restante* WIPO Case No. [D2022-0369](#), and *Sodexo v. Hulmiho Ukolen, Poste Restante*, WIPO Case No. [D2022-0199](#)). This pattern further supports a finding of bad faith according to paragraph 4(b)(ii) of the Policy (see section 3.1.2 of the [WIPO Overview 3.0](#)).

A further finding of bad faith is supported by the fact that the disputed domain name was offered for sale for valuable consideration likely in excess of the Respondent's out-of-pocket costs (see section 3.1.1 of the [WIPO Overview 3.0](#)).

The abovementioned facts show that not only the Respondent registered the disputed domain names in bad faith, but also, that the Respondent has been using the disputed domain names in bad faith. Therefore, based on the available record, the Panel finds the third element of the Policy has been established.

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, <cloplay.com>, be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: November 17, 2023