

ADMINISTRATIVE PANEL DECISION

Thalia Bücher GmbH v. Ranferi Hernandez, Thalia
Case No. D2023-4205

1. The Parties

The Complainant is Thalia Bücher GmbH, Germany, represented by Taylor Wessing Partnerschaftsgesellschaft mbB, Germany.

The Respondent is Ranferi Hernandez, Thalia, United States of America.

2. The Domain Name and Registrar

The disputed domain name <shopthalia.shop> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 10, 2023. On October 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 10, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 11, 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 the same day.

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 October 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 9, 2023.

The Center appointed Jane Seager as the sole panelist in this matter on November 20, 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

Founded in 1919, the Complainant is a German company operating a chain of over 340 stores selling books, e-books, audio books, toys, stationary, technology, gifts, and various other goods to consumers in Austria, Germany, and Switzerland. The Complainant employs some 6,000 people with an annual turnover of approximately EUR 1.3 billion.

The Complainant is the registered owner of a number of trademarks for THALIA, including:

- German Trademark Registration No. 1121000, THALIA, registered on April 21, 1988; and
- European Union Trade Mark Registration No. 003396397, THALIA, registered on May 24, 2012.

The Complainant is also the registrant of the domain name <thalia.de>, which resolves to the Complainant's official public-facing website and from which it operates an online store.

The disputed domain name was registered on August 18, 2023. The disputed domain name resolves to a website that purports to be an online store (the "Respondent's website"). The only products offered for sale via the Respondent's website are a hanging wireless neck fan, an LED night light mini tree, a wall toothbrush holder, and a smart trash can. Clicking on the links to each of these products results in being redirected back to the homepage of the Respondent's website.

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 THALIA trademark in which the Complainant has rights.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent's use of the disputed domain name comprising the THALIA trademark in connection with an online shop creates confusion with the Complainant and infringes the Complainant's trademark.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant argues that the disputed domain name was registered with the intent of misleading Internet users as to the commercial origin of the Respondent's website, and that by using the disputed domain name, the Respondent is taking unfair advantage of the Complainant's trademark to further the Respondent's own purposes.

The Complainant requests transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions

6. Discussion and Findings

In order to prevail, the Complainant must demonstrate on the balance of probabilities that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) The disputed domain name is identical 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 respect of the disputed domain name; and
- (iii) The disputed domain name was registered and is being used in bad faith.

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.

While the addition of other terms, in this case "shop", 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.

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.

While the Respondent's website has the appearance of being an online store, closer inspection reveals that the Respondent's website offers only four products, and the website itself lacks basic functionality. The Respondent's website is underdeveloped, and the Respondent has not come forward with any evidence of preparations to develop its website any further. The Panel finds that the Respondent is not using the disputed domain in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. Absent any communications from the Respondent, the Panel finds that the mere inclusion of "Thalia" as the registrant organization in the Whois information for the disputed domain name does not in itself give rise to any legitimate claim of being commonly known by the disputed domain name pursuant to paragraph 4(c)(ii) of the Policy. Nor is there any evidence to suggest that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name as contemplated by paragraph 4(c)(iii) of the Policy.

Having reviewed the 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.

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 Panel notes that the Complainant's trademark predates the Respondent's registration of the disputed domain name by many years. The disputed domain name itself consists of the term "shop" followed by the element "thalia", corresponding to the Complainant's THALIA trademark, under the generic Top-Level Domain ".shop". Further noting that the Complainant's core business focuses on retail services, the Panel infers that the Respondent knew or should have known of the Complainant's rights in the THALIA trademark when registering the disputed domain name. As noted above, the disputed domain name resolves to a website that purports to be an online store. While the Respondent's website is somewhat unfinished, the website is clearly intended to be commercial in nature. On the balance of probabilities, the Panel finds that the Respondent likely registered the disputed domain name with a view to attracting Internet users seeking the Complainant to its website, in bad faith. The Respondent's use of the disputed domain name as described above signals an intent on the part of the Respondent to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and the products offered therein, in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

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, <shopthalia.shop>, be transferred to the Complainant.

/Jane Seager/

Jane Seager

Sole Panelist

Date: December 6, 2023