

ADMINISTRATIVE PANEL DECISION

LTG Support Pty Ltd. v. Rob Allison
Case No. D2024-4520

1. The Parties

The Complainant is LTG Support Pty Ltd., Australia, represented by Mitry Lawyers, Australia.

The Respondent is Rob Allison, Australia.

2. The Domain Names and Registrar

The disputed domain names <lovetillydevine.com>, <lovetillygroup.com>, and <ragazziwineandpasta.com> are registered with Synergy Wholesale Accreditations Pty Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2024. On November 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 12, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Synergy Wholesale Pty Ltd) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 2024, 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 the same day.

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 November 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 9, 2024.

The Center appointed John Swinson as the sole panelist in this matter on December 11, 2024. 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 operates several restaurants in Australia and has used the disputed domain names for several years for these restaurants.

On June 5, 2024, the Complainant filed two Australian trademark applications for LOVE TILLY (Application No. 2463943) and LOVE TILLY GROUP (Application No. 2463944). Both these applications have been accepted and are currently in the opposition period. The opposition period expires on or about February 6, 2025.

On June 5, 2024, a company called "Matestwo Pty Ltd" filed an Australian trademark application for LOVE TILLY DEVINE (Application No. 2463945). This application has been accepted and is currently in the opposition period. The opposition period expires on or about February 6, 2025.

On June 5, 2024, a company called "Ciao Ragazzi Pty Ltd" filed two Australian trademark applications for RAGAZZI WINE AND PASTA (Application No. 2463949) and RAGAZZI WINE PASTA in a fancy font (Application No. 2463950). Both these applications have been accepted and are currently in the opposition period. The opposition period expires on or about February 6, 2025.

The Respondent is associated with a company called Calibre Creative. According to his LinkedIn profile, the Respondent is a director at Calibre Creative AU. The website for Calibre Creative states "Bespoke Digital Development. New Site Coming Soon".

The disputed domain names were registered on the following dates:

- <lovetillydevine.com> - November 29, 2009;
- <ragazziwineandpasta.com> - July 7, 2019; and
- <lovetillygroup.com> - July 20, 2020.

According to the Complainant, the Respondent was engaged by the Complainant to "register domain names" for the Complainant, Matestwo Pty Ltd, and (Ciao) Ragazzi Pty Ltd, which involved "transferring [the disputed domain names] from other domain hosts to the preferred domain host."

The Complainant states that since April 2024, the Complainant has been unable to access the disputed domain names and that the Respondent has access to the disputed domain names and refuses to provide the Complainant with access to them.

On May 20, 2024, the Complainant emailed the Respondent requesting that the disputed domain names be transferred to the Complainant. No response was received to this or subsequent communications, including from the Complainant's legal representatives.

It appears that the Complainant is using one of the disputed domain names for its email address.

The disputed domain names resolve to websites for restaurants. It is possible that at least one of these websites advertise a restaurant operated by the Complainant.

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 names.

Notably, the Complainant contends that the Complainant owns pending trademark applications for various trademarks and that, provided there are no trademark oppositions, these applications become registrations.

The Complainant engaged the Respondent of Calibre Creative to register domain names for Love Tilly Group entities.

Since April 2024, the Complainant has been unable to access the disputed domain names.

The Complainant has made multiple attempts to contact Calibre Creative via phone, email, and text message regarding this matter, all of which have been completely ignored.

The conduct of the Respondent in deliberately refusing to communicate with the Complainant to transfer ownership of the disputed domain names to the Complainant indicates bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and is being used in bad faith.

The onus of proving these elements is on the Complainant.

Each disputed domain name must be considered separately.

Consolidation: Multiple Domain Names

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. In the present case, the named Respondent is the same for all disputed domain names.

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 evidence before the Panel, the Complainant does not hold any registered trademark rights. A pending trademark application would not by itself establish trademark rights within the meaning of UDRP paragraph 4(a)(i). [WIPO Overview 3.0](#), section 1.1.4.

Moreover, the evidence before the Panel shows that the Complainant is the applicant only for LOVE TILLY GROUP and LOVE TILLY. Two other entities (who are not named as Complainants) own the other trademark applications relied upon by the Complainant. The Complainant presented no evidence of the relationship between the Complainant and these two other entities and made no submissions in this regard. At one point, the Complaint asserts that “the Complainant owns rights to ... LTG Support Pty Ltd (Love Tilly Group)” which is confusing, because LTG Support Pty Ltd is the Complainant.

The Complaint included no evidence of any use by or reputation of the Complainant in respect of the trademarks relied upon. “Love Tilly Devine” may or may not be a well-known restaurant, but the Panel has no evidence on which to make that decision.

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services.

Relevant evidence demonstrating such acquired distinctiveness includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. None of this was provided by the Complainant.

Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. [WIPO Overview 3.0](#), section 1.3.

In view of the finding below, the Panel does not decide the first element of the Policy.

B. Rights or Legitimate Interests

In view of the finding below, the Panel does not decide the second element of the Policy.

C. Registered and Used in Bad Faith

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant. *Instagram, LLC v. Domains By Proxy, LLC / Masud Rana, D-limit Ltd*, WIPO Case No. [D2022-0250](#).

An asserting party needs to establish that it is, more likely than not, that the claimed fact is true. An asserting party cannot meet its burden by simply making conclusory statements unsupported by evidence. To allow a party to merely make factual claims without any supporting evidence would essentially eviscerate the requirements of the Policy as both complainants or respondents could simply claim anything without any proof. For this reason, UDRP panels have generally dismissed factual allegations that are not supported by any bona fide documentary or other credible evidence. *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunberg*, WIPO Case No. [D2021-3279](#).

The evidence in the case file as presented does not indicate that the Respondent’s aim in registering the disputed domain names was to specifically profit from or exploit the Complainant’s trademark.

There is no evidence of any contract or arrangement between the Complainant and the Respondent, there is no evidence of who created the websites at the disputed domain names (or when they were created), there is no evidence of when it is alleged that the Respondent took control of the disputed domain names or how

or when he accomplished this, there is no evidence of any communication by the Complainant with the Respondent prior to 2024, and there is no evidence of any communications from the Respondent at any time. In short, the key facts necessary for the Panel to decide this case are a mystery.

In short, there is no evidence that the Respondent registered the disputed domain name with the intention of infringing any rights of the Complainant or any other party, and on the contrary, the Panel finds that most likely, on the Complainant's case, the Respondent registered the disputed domain names with the legitimate intention of using the disputed domain names in connection with the operation of the Complainant's websites for the Complainant. Compare *Les Editions Jalou v. Sidharth Saigal and Chalk Media FZE*, WIPO Case No. [D2023-1430](#).

Moreover, the Complaint did not rely upon any of the past 25 years of jurisprudence under the Policy or make arguments that are consistent with the Policy.

Asserting that the Respondent refuses to communicate with the Complainant is not, of itself, evidence of bad faith use or registration of the disputed domain names under the Policy.

This does not appear to be a case of cybersquatting, but a contractual dispute. The Policy is not designed for such disputes. See *NH Resources LLC, Vaughn Crowe v. Andrew Holmes*, WIPO Case No. [D2015-0064](#) and the cases cited therein.

7. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: December 23, 2024