

ADMINISTRATIVE PANEL DECISION

Autry International S.r.l. v. 晓东 汤

Case No. D2022-0620

1. The Parties

The Complainant is Autry International S.r.l., Italy, represented by LEGANCE Avocati Associati, Italy.

The Respondent is 晓东 汤, China.

2. The Domain Name and Registrar

The disputed domain name <autryshop.com> is registered with Name.com, Inc. (Name.com LLC) (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2022. On February 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on March 1, 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 March 1, 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 March 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 23, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on March 27, 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 since 2018 operated in the fashion and luxury sector, manufacturing and marketing clothing, footwear and accessories and selling worldwide, including through its website at the domain name <autry-usa.com> which was registered on May 4, 2020. It owns various trade mark registrations for its AUTRY mark including European Union (“EU”) trade mark No. 017916957 registered on September 25, 2018. The Complainant owns numerous other domain names that incorporate its AUTRY mark including <autryfashion.com> and <autrystyle.com>.

The disputed domain name was registered on December 2, 2021 and resolves to a website that advertises and sells the same or similar goods as those sold by the Complainant and also features the Complainant’s logo and images copied from the Complainant’s website.

5. Parties’ Contentions

A. Complainant

The Complainant submits that it owns registered trade mark rights for its AUTRY mark as set out above. It says that as the disputed domain name wholly incorporates its mark it is confusingly similar to the AUTRY mark and that the inclusion of the common English word “shop” in the disputed domain name does not prevent a finding of confusing similarity.

The Complainant further submits that its AUTRY mark has been extensively and exclusively used and registered by the Complainant as a company name and in trade marks and domain names before the Respondent registered the disputed domain name and it therefore has prior rights in the AUTRY mark. It notes that the Respondent is not commonly known in the market as “Autry” and in fact when entering the keyword “autry” into the Google search engine, no results relate to the Respondent. It says also that based on its research of publicly available databases, the Respondent has no registered trade mark rights for “Autry”. The Complainant has also confirmed that it has not licensed or otherwise permitted or authorised the Respondent to use the Complainant’s AUTRY trade mark in the disputed domain name, or for any other purpose.

It also says that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the AUTRY trade mark. It asserts that through the website at the disputed domain name the Respondent not only advertises and sells counterfeit goods, but also uses logos, pictures and layout of the Complainant’s website. This, says the Complainant, is not a legitimate or noncommercial fair use of the disputed domain name and creates a strong likelihood that diverted Internet users will be confused into thinking that the website at the disputed domain name is sourced from, sponsored by, or affiliated with the Complainant or its AUTRY mark, or products, which is evidence of registration and use in bad faith under paragraph 4(b)(iv) of the Policy.

The Complainant notes that the disputed domain name was registered years after the Complainant obtained its trade mark registration for and used the AUTRY sign, either as a mark or company name. It says that the disputed domain name was registered in December 2021, while the Complainant: (a) has used the sign “Autry” as its company name since 2018; (b) registered AUTRY as its main trade mark in 2018; and (c) registered its domain name <autry-usa.com> in 2020. The Complainant asserts that its AUTRY mark has been mentioned in numerous magazines, newspapers and journals prior to December 2, 2021, which is indicative of the robust reputation of its mark. It says that in light of these circumstances, it is clear that the

Respondent registered the disputed domain name with full knowledge of the Complainant's company name and trade mark.

Finally, the Complainant says that it sent a cease and desist letter to the Respondent through the registrar for the disputed domain name but has never received a response.

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 that it owns various trade mark registrations for its AUTRY mark including EU trade mark No. 017916957 registered on September 25, 2018. The disputed domain name wholly incorporates the AUTRY mark and is therefore confusingly similar to it. The inclusion of the common English word "shop" in the disputed domain name does not prevent a finding of confusing similarity.

As a result, the Complaint succeeds under this element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that it has made considerable use of its AUTRY mark as a company name and in trade marks and domain names before the Respondent registered the disputed domain name and it therefore has prior rights in the AUTRY mark. It says that the Respondent is not commonly known in the market as "Autry" and in fact when entering the keyword "autry" into the Google search engine the Complainant maintains that no results relate to the Respondent.

The Complainant has noted that based on its research of publicly available databases, the Respondent has no registered trade mark rights for "Autry". It has also confirmed that it has not licensed, permitted or authorised the Respondent to use the Complainant's AUTRY trade mark in the disputed domain name, or for any other purpose. Finally, the Complainant has asserted, that in the circumstances of use as further described under Part C below, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and that it is in fact using the disputed domain name to resolve to a website at which it is using the Complainant's logo and images without permission to promote and to illegitimately sell goods without consent under the Complainant's AUTRY mark.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. As the Respondent has failed to rebut this case and also for the reasons set out under Part C below, the Panel finds that the Complainant has successfully made out its case and that the Complaint also succeeds under this element of the Policy

C. Registered and Used in Bad Faith

The disputed domain name was registered on December 2, 2021, several years after the Complainant commenced its business and registered its AUTRY trade mark and more than 18 months after the Complainant registered its domain name <autry-usa.com> from which it operates its main website. The AUTRY mark is not a common word or name and is quite distinctive, in particular for a potential domain name registrant such as the Respondent, based in China. The fact that the website to which the disputed domain name resolves features the Complainant's mark and combined logo and that it also appears to reproduce various images from the Complainant's website, indicates that it is most likely that it was well aware of the Complainant's AUTRY mark and business when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy, there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

It appears that the Respondent is selling either the Complainant's products without authority or is selling counterfeit products, at the website to which the disputed domain name resolves. Either way it is also using the Complainant's AUTRY mark and its combined word mark logo as if it is the Complainant, or has some association or affiliation with it when this is not the case. It is apparent that the Respondent is using the disputed domain name containing the AUTRY mark to intentionally confuse Internet users into thinking that the website to which it resolves, or the products being sold there are the Complainant's products, or that the website is somehow affiliated with the Complainant, or is endorsed by it when this is not the case. Accordingly, the Panel finds that this conduct fulfills the requirements of paragraph 4(b)(iv) of the Policy and that this amounts to evidence of the Respondent's registration and use of the disputed domain name in bad faith.

The fact that the Respondent failed to respond to the Complainant's cease and desist letter sent to it through the registrar only further reinforces the Panel's view of the Respondent's bad faith.

For these reasons the Panel finds that the disputed domain name was both registered and used in bad faith and that the Complaint succeeds under this element 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 <autryshop.com> be transferred to the Complainant.

/Alistair Payne/
Alistair Payne
Sole Panelist
Date: April 10, 2022