

ADMINISTRATIVE PANEL DECISION

**ABG-Sportcraft, LLC v. Domain Administrator, See PrivacyGuardian.org /
zetian wu, wu
Case No. D2022-1704**

1. The Parties

The Complainant is ABG-Sportcraft, LLC, United States of America (“United States”), represented by Authentic Brands Group, United States.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States / zetian wu, wu, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 11, 2022. On May 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 11, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 12, 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 amendment to the Complaint on May 12, 2022.

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 May 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 16, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on June 16, 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

Founded in 1926, the Complainant is the maker of home and outdoor recreational sports and games. It was the first to introduce novelty European recreational sporting games, such as croquet, bocce, badminton and darts to the United States. It was the first to ship lawn game sets in carry bags. Its products and services are sold and provided under the trade mark SPORTCRAFT. The Complainant's SPORTSCARFT products are sold through retailers like Target and Amazon.

The Complainant's SPORTSCRAFT trade mark is registered in Canada under Trade Mark Registration No 187239 since December 15, 1972 (the "Trade Mark").

The Respondent, who is based in China, registered the Domain Name on November 5, 2021. The Domain Name resolves to website that is a gambling site, which has explicit adult images and pornographic content (the "Website").

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name has been registered and is being used in bad faith. The Complainant requests transfer of the Domain Name to the Complainant.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) The Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) The Domain Name was registered and is being used in bad faith.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the

domain name.

In this case, the Domain Name contains the Complainant's Trade Mark in its entirety with the addition of the geographical term "Canada". The addition of this word does not prevent a finding of confusing similarity. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD"), which in this case is ".com", because it is viewed as a standard registration requirement (section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights, and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made out, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does not come forward with such allegations and evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that there is no evidence that the Respondent is commonly known by the Domain Name nor has any trade mark rights to the Trade Mark. Further, it has not authorised, licensed, sponsored, or otherwise permitted the Respondent to use the Trade Mark in the Domain Name or for any other purpose. The Respondent's unauthorized use of the Trade Mark in the Domain Name in relation to gambling services and pornographic content is not *bona fide* or legitimate noncommercial or fair use of the Domain Name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not provided any explanation of its rights or legitimate interests in relation to the Domain Name, and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

D. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith.

The Panel is satisfied that the Respondent was aware of the Trade Mark when it registered the Domain Name given that the Trade Mark predates the Domain Name by about 40 years and the reputation of the Trade Mark. It is therefore implausible that the Respondent was unaware of the Complainant when it registered the Domain Name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent’s choice of the Domain Name (clearly targeting the Complainant’s Trade Mark) is also a significant factor to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The Domain Name falls into the category stated above and the Panel finds that registration is in bad faith.

The Panel also finds that the actual use of the Domain Name is in bad faith. The Website is a pornographic and gambling website. These services have been set up for the commercial benefit of the Respondent. It is highly likely that Internet users when typing the Domain Name into their browser or finding it through a search engine would have been looking for a website operated by the Complainant or connected to the Complainant rather than the Respondent’s pornographic/gambling website.

The Domain Name is likely to confuse Internet users trying to find the Complainant’s official website. Such confusion will inevitably result due to the complete incorporation of the Trade Mark in the Domain Name. The Respondent employs the reputation of the Trade Mark to mislead Internet users into visiting the website connected to the Domain Name instead of the Complainant’s. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent’s Domain Name is somehow connected to the Complainant.

The Panel therefore concludes that the Domain Name was registered and is being used in bad faith both under paragraph 4(b)(iv) 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 Domain Name, <sportcraftcanada.com> be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: July 6, 2022