

ADMINISTRATIVE PANEL DECISION

Summersalt, Inc. v. Mayandican
Case No. D2022-2188

1. The Parties

Complainant is Summersalt, Inc., United States of America (“United States” or “U.S.”), represented by Dunlap Codding, P.C., United States.

Respondent is Mayandican, United States.

2. The Domain Name and Registrar

The disputed domain name <summersaltus.com> (the “Domain Name”) is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 15, 2022, with regards to the domain names <comsummersalt.com>, <mysummersalt.com>, <ssummersalt.com>, <summerrsalt.com>, <summersaltus.com>, <summerssalt.com>, and <wwwsummersalt.com>. On June 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with these domain names. On June 17, 2022, the Registrar transmitted by email to the Center its verification responses disclosing registrants and contact information for these domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on June 17, 2022 providing the registrants and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 22, 2022, in which Complainant requested withdrawal of the domain names <comsummersalt.com>, <mysummersalt.com>, <ssummersalt.com>, <summerrsalt.com>, <summerssalt.com>, and <wwwsummersalt.com>.

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 Respondent of the Complaint, and the proceedings commenced on June 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 14, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on June 15, 2022.

The Center appointed Harrie R. Samaras as the sole panelist in this matter on July 21, 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

Complainant is a direct-to-consumer apparel company that began selling apparel (e.g., swimwear, underwear, pajamas, loungewear, dresses, jackets, sweaters, t-shirts, skirts, shorts and pants) in 2013. It owns several U.S. and International trademark registrations for the SUMMERSALT Mark or ("the Mark"), including U.S. Trademark Registrations Nos. 6,141,658 (registered on September 1, 2020), 6,003,546 (registered on March 3, 2020), 5,939,575 (registered on December 17, 2019), and 5,891,293 (registered on October 22, 2019). Complainant sells its products via its website at "www.summersalt.com".

The Domain Name was registered on April 20, 2022. It used to resolve to a website offering for sale swimwear, like Complainant sells on its website. Now the Domain Name resolves to a website offering jewelry.

5. Parties' Contentions

A. Complainant

The Domain Name is identical and/or confusingly similar to Complainant's SUMMERSALT Mark because the Domain Name merely includes the addition of the term "us" to Complainant's recognizable SUMMERSALT Mark, which does not distinguish the Domain Name from Complainant's SUMMERSALT Mark. Adding the term "us" actually increases the likelihood of confusion because the Domain Name is likely to be associated with Complainant, given Complainant's principal place of business is in the United States and Complainant sells products across the globe. Adding the term "us" to Complainant's domain name <summersalt.com> is a way of directing consumers to Respondent's website. The Domain Name previously resolved to a website containing imagery improperly copied from Complainant's official site.

Respondent has no rights or legitimate interests in the Domain Name as Respondent is not commonly known by it. Also, Complainant has not authorized Respondent to use the Mark. Furthermore, the Domain Name has been used in connection with a site having unauthorized copies of Complainant's imagery, which is not a *bona fide* offering of goods or services or a noncommercial legitimate use or fair use.

Respondent registered and is using the Domain Name in bad faith because: (a) the Domain Name resolved to a site containing imagery improperly copied from Complainant's official site; (b) the Domain Name is confusingly similar to the Mark; (c) Respondent's use of Complainant's imagery proves that Respondent knew of Complainant and used its imagery to create a likelihood of confusion and attract consumers to the website associated with the Domain Name; (d) Respondent does not have a legitimate interest in the Domain Name; and (e) Respondent's address associated with the Domain is incomplete – Los Angeles – which suggests that Respondent sought to delay or avoid the consequences of this proceeding.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is uncontroverted that Complainant has established rights in the SUMMERSALT Mark based on the aforementioned trademark registrations for it.

Furthermore, the Domain Name is confusingly similar to the SUMMERSALT Mark because it incorporates that Mark in its entirety and adds the designation “us”, which does not prevent a finding of confusingly similarity. In this case, combining Complainant’s SUMMERSALT Mark with “us”, which can be understood as a geographical designation, supports the Panel’s findings under the third element. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

It is well settled that the addition of the generic Top-Level Domain, here “.com”, is not significant in determining whether a domain name is identical or confusingly similar to a trademark. *CBS Broadcasting Inc. v. Worldwide Webs, Inc.*, WIPO Case No. [D2000-0834](#).

For the foregoing reasons, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Respondent has no information that Respondent is commonly known by a name corresponding to the Domain Name, indeed Respondent’s name according to the Whois records is Mayandican. Also, Complainant has not authorized Respondent to use the Mark for any purpose. Furthermore, the Domain Name has been used in connection with a site using copies of images from Complainant’s website to sell similar apparel, which is not a *bona fide* offering of goods or services or a noncommercial legitimate use or fair use of the Mark. And now Respondent is using the Domain Name to sell jewelry, which also demonstrates that Respondent is continuing to make a commercial use of the Domain Name with intent for commercial gain to misleadingly divert consumers.

Where, as here, Complainant has raised a *prima facie* presumption of Respondent’s lack of any rights or legitimate interests in the Domain Name, and Respondent has failed to rebut that presumption, the Panel is satisfied that Complainant has carried its burden of proving that Respondent has no rights or legitimate interests in the Domain Name within the meaning of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

At the time Respondent registered the Domain Name in April 2022, Complainant had been using the SUMMERSALT Mark since at least 2017 to promote its products including swimming apparel. Respondent registered a Domain Name that is exactly the same as Complainant’s registered SUMMERSALT Mark (adding a designation that the public could assume is a geographical designator for the United States – Complainant’s primary market) to sell swimwear apparel like Complainant’s swimwear apparel. In fact, it appears that Respondent misappropriated images from Complainant’s website to sell competitive swimwear on its website. Given these facts it is highly unlikely Respondent was unaware of Complainant or its SUMMERSALT Mark when registering the Domain Name.

Respondent has also been using the Domain Name in bad faith. As indicated above, Respondent was using the Mark to sell goods that compete with those sold by Complainant under the Mark. Now, although it has changed the content on its website to sell jewelry instead of swimsuits, the fact remains Respondent continues to use the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the SUMMERSALT Mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s jewelry.

The Panel therefore holds that Complainant has established the third element under the Policy above.

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 <summersaltus.com> be transferred to Complainant.

/Harrie R. Samaras/

Harrie R. Samaras

Sole Panelist

Date: August 4, 2022