

ADMINISTRATIVE PANEL DECISION

47 Brand LLC v. Wu Yu
Case No. D2022-2461

1. The Parties

The Complainant is 47 Brand LLC, United States of America (“US”), represented by Sunstein LLP., US.

The Respondent is Wu Yu, China.

2. The Domain Name and Registrar

The disputed domain name <fortyseven.shop> (the “Disputed Domain Name”) is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2022. On July 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 8, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 13, 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 July 15, 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 July 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 16, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on August 23, 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 is a US company which makes headgear such as baseball caps. The Complainant owns various trademarks for the words “FORTY SEVEN” – see for example US registration 4,239,368 registered November 6, 2012 – as well as registrations for the figures “47” – see for example US registration 4,277,350 registered January 15, 2013. These trademarks are referred to in this decision as, respectively the “FORTY SEVEN trademarks” and the “47 Trademarks” and together as the “FORTY SEVEN/47 trademarks”. The FORTY SEVEN/47 trademarks have been used in connection with officially-licensed headwear for all major sports leagues and teams in the United States, as well as for collegiate sports teams, and have also been used for other apparel and related goods, for many years. The Complainant has used the FORTY SEVEN/47 trademarks in connection with headwear since at least July 31, 2008

The Respondent registered the Disputed Domain Name on June 14, 2022. It resolves to a website which offers the Disputed Domain Name for sale for USD 1999 and contains what appear to be “pay per click” (“PPC”) links to third party websites. The Panel infers those links are automatically generated by an underlying algorithm.

5. Parties’ Contentions

A. Complainant

The Complainant says that the Disputed Domain Name is identical or confusingly similar to the FORTY SEVEN/47 Trademarks.

The Complainant says that the Respondent has no rights or legitimate interests in the terms “FORTY SEVEN” or “FORTYSEVEN” or “47”.

In consequence the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. The Complainant says the offer for sale of the Disputed Domain Name and the use of the Disputed Domain Name in connection with a PPC website establishes such bad faith.

B. Respondent

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

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favour of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the FORTY SEVEN/47 Trademarks. The Panel finds the Disputed Domain Name is confusingly similar to these trademarks. It is established that, where a mark is recognizable within a disputed domain name, the disputed domain name is considered to be confusingly similar to the registered mark. In the present case the only difference between the FORTY SEVEN trademarks and the Disputed Domain Name is the omission of a space, which is in any case cannot form part of a domain name for technical reasons. The Panel considers this difference to be trivial. The FORTY SEVEN/47 Trademarks are aurally identical to the Disputed Domain Name, save for the generic Top-Level Domain (“gTLD”) suffix.

It is also well established that the gTLD suffix, in this case “.shop”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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 the respondent has acquired no trademark 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 trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use FORTY SEVEN/47 Trademarks. The Complainant has prior rights in the FORTY SEVEN/47 Trademarks which precede the Respondent's acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly the Panel finds the Respondent has no rights or any

legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel concludes that (i) applies as the Respondent is offering the Disputed Domain Name for sale at a price which is likely (and noting the lack of response/evidence) in excess of his documented out-of-pocket costs directly related to the Disputed Domain Name. On the evidence the likely purchasers would be either the Complainant or a competitor – there is no evidence anyone else uses the term FOTY SEVEN or 47 in commerce as an indication of origin.

The Panel also considers (iv) applies as the Disputed Domain Name is likely to attract traffic because of confusion with the Complainant's mark, and the Respondent derives commercial gain as a result. The website linked to the Disputed Domain Name comprises a series of pay-per-click ("PPC") links to other third-party websites. The Panel infers that some consumers, once at this website will follow the provided links and "click through" to other sites which offer products some of which may compete with those of the Complainant. The Respondent presumably earns "click through" linking revenue as a result. The Panel infers the website is automatically generated. This does not however matter. It is well established that where a domain name is used to generate revenue in respect of "click through" traffic, and that traffic has been attracted because of the name's association with the Complainant, such use amounts to use in bad faith, see for example *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#); *Owens Corning v. NA*, WIPO Case No. [D2007-1143](#); *McDonald's Corporation v. ZusCom*, WIPO Case No. [D2007-1353](#); *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#); *Rolex Watch U.S.A., Inc. v. Vadim Krivitsky*, WIPO Case No. [D2008-0396](#).

See also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition section 3.5: "Can third-party generated material "automatically" appearing on the website associated with a domain name form a basis for finding bad faith?"

Particularly with respect to "automatically" generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests).

Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding

of bad faith”.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <fortyseven.shop> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: September 7, 2022