

ADMINISTRATIVE PANEL DECISION

Dune Topco Ltd v. Whois Agent, Domain Protection Services, Inc. / Gvdgy
Tvyeei

Case No. D2022-2978

1. The Parties

The Complainant is Dune Topco Ltd, United Kingdom (“UK”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Whois Agent, Domain Protection Services, Inc., United States of America / Gvdgy Tvyeei, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2022. On August 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 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 August 18, 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 August 18, 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 August 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 9, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on September 19, 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is a member of the Dune Group, which is a global player in the fashion footwear and accessories field. The Complainant has 30 years of experience in the footwear industry and is a member of the British Footwear Association. The Complainant has 54 standalone stores and 88 concessions in department stores across the UK and Europe. The Complainant's group has 128 franchised stores and concessions in 17 countries around the world.

The Complainant's trademarks are owned by Dune Brand Limited and Dune Holdings Limited. Both companies are wholly owned subsidiaries of the Complainant. The Complainant proved ownership of many DUNE LONDON trademarks, including the European Union trademark no. 005660741 registered on December 7, 2007 in classes 18, 25, 35, the International trademark no. 1149052 registered on January 7, 2013 in class 35.

The Complainant has registered since February 22, 2000 the domain name <dunelondon.com> that it uses as an official website, in addition to many other domain names consisting of or including "dune london".

The disputed domain name was registered on June 6, 2022 and resolves to a website purporting to sale DUNE LONDON branded goods at discounted prices.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is identical to the Complainant's DUNE LONDON trademark and that the addition of a hyphen does not diminish the confusing similarity between the disputed domain name and the Complainant's trademarks.

With respect to the second element, the Complainant argues that the Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant has not given the Respondent permission to use the Complainant's trademarks in any manner, including in domain names. The Respondent is not commonly known by the disputed domain name, as the pertinent Whois information identifies the registrant as "Gvdgy Tvyeei", which does not resemble the disputed domain name in any manner. Moreover, the Complainant argues that the Respondent is using the disputed domain name in connection with a commercial website which offers and attempts to sell products branded with the DUNE / DUNE LONDON trademarks. As the Respondent is not an authorized reseller of the Complainant's products, the potential does exist that the products could be counterfeits.

As regards the third element, the Complainant contends that its DUNE and DUNE LONDON trademarks are known internationally, and that the Complainant has marketed and sold its goods and services using the mentioned trademarks since 1992, which is well before the Respondent's registration of the disputed domain name on June 6, 2022. By registering a domain name that fully incorporates the Complainant's DUNE LONDON trademark, the Respondent has created a domain name that is confusingly similar to the Complainant's trademark. As such, the Respondent has demonstrated a knowledge of and familiarity with the Complainant's brand and business. Moreover, the Respondent is using the disputed domain name to

host a website that has the appearance of being an official website of the Complainant, as the Respondent's website features the Complainant's DUNE and DUNE LONDON trademarks, along with a very similar appearance, and product images pulled directly from the Complainant's website. In addition, the Respondent had employed a privacy service to hide its identity, which past Panels have held serves as further evidence of bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters

No communication has been received from the Respondent in this case. However, given that the Complaint was sent to the relevant addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules 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 favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default.

6.2. Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

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

A. Identical or Confusingly Similar

The Complainant has proved rights over the DUNE LONDON trademark.

The disputed domain name incorporates the trademark DUNE LONDON in its entirety, with the only difference that in the disputed domain name a hyphen is added between the two words forming the trademark, which does not in the view of the Panel prevent the Complainant's trademark from being recognizable within the disputed domain name. Many UDRP panels have found that a disputed domain name is confusingly similar where the relevant trademark is recognizable within the disputed domain name. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

It is well accepted by UDRP panels that a gTLD, such as ".com", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark DUNE LONDON and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, according to the unrebutted evidence of the Complainant, the website at the disputed domain name is used to offer for sale DUNE LONDON goods at a discounted price – more than 50% price reduction. Under these circumstances it is reasonable to infer that the products offered on the website at the disputed domain name are counterfeit of the Complainant's products. Even if the products were genuine, the lack of any disclaimer on the website at the disputed domain name as to the registrant's relationship with the trademark owner or the lack thereof, would falsely suggest to Internet users that the website to which the disputed domain name resolved is owned by the Complainant or at least affiliated to the Complainant (as per the Oki Data principles outlined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)).

Also, there is no evidence that the Respondent is commonly known by the disputed domain name.

Furthermore, the nature of the disputed domain name, that includes the Complainant's well-established trademark, carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainant's contentions.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. The disputed domain name resolves to a website reproducing the Complainant's trademark and purportedly offering for sale the Complainant's products but at a much lower price. Given the distinctiveness and long use of the Complainant's trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and to target those trademarks.

The inherently misleading disputed domain name resolves to a website, which ostensibly offers the Complainant's products at a much lower price. As such, the disputed domain name suggests affiliation with the Complainant in order to attract consumers and offer products that appear to be counterfeit.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is 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, <dune-london.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: October 11, 2022