

## **ADMINISTRATIVE PANEL DECISION**

Full Fortune Intellectual Limited, Crocs, Inc. v. Unger Johanna  
Case No. D2022-3266

### **1. The Parties**

The Complainants are Full Fortune Intellectual Limited, Hong Kong, China and Crocs, Inc., United States of America (“United States”), represented by Kestenberg Siegal Lipkus LLP, Canada.

The Respondent is Unger Johanna, Germany.

### **2. The Domain Name and Registrar**

The disputed domain name <heydude-shoes-sale.com> is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2022. On September 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 5, 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 Complainants on September 6, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on September 6, 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 September 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 3, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on October 18, 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**

Both Crocs, Inc., and Full Fortune Intellectual Limited are footwear companies. Crocs, Inc., acquired Full Fortune Intellectual Limited in 2021 and will collectively be referred to herein as the “Complainant”.

The Complainant owns numerous United States and worldwide trademark registrations for its HEY DUDE marks in connection with footwear and other merchandise, including the United States Registration No. 5516629, registered on July 17, 2018, Registration No. 5455302, registered on April 24, 2018, and Registration No. 5908627, registered on November 12, 2019, all for goods in international class 25.

The Complainant owns domain names incorporating its HEY DUDE trademark, including <heydudeshoes.com>, <heydudeshoesusa.com>, and <heydudeshoes.co.uk>.

The disputed domain name was registered on March 16, 2022. The disputed domain name resolves to a website that purportedly sells goods under the HEY DUDE mark at very low prices.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s mark, since it incorporates the Complainant’s HEY DUDE trademark in its entirety, along with the terms “shoes” and “sale”, separated by hyphens. The addition of the term “shoe” intensifies the confusion a consumer would experience because the Complainant operates online stores where consumers are able to purchase the Complainant’s goods, which include shoes. Furthermore, the addition of “sale” intensifies the confusion that a consumer would experience because occasionally, the Complainant offers their products to consumers on sale at a discounted price both online and through authorized retailers.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way. The Complainant has not authorized the Respondent to use and register its trademarks and service marks, or to seek the registration of any domain name incorporating said mark. The Respondent also has no proprietary rights or legitimate interests in “hey dude”. The Respondent’s name is Unger Johanna, and she is not commonly known by the name “hey dude” nor by the disputed domain name.

The Complainant finally contends, that the Respondent registered and is using the disputed domain in bad faith. The Respondent is thus diverting the Complainant’s customers or potential customers seeking information about the Complainant to a website which offers suspected counterfeit HEY DUDE products for sale as part of a suspected phishing scheme. The Complainant has no control over the use of the disputed domain name using its primary intellectual property, HEY DUDE. By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on its website.

The disputed domain name thus resolves to a webpage, which displays the HEY DUDE intellectual properties alongside suspected counterfeit HEY DUDE shoes, which are available for prices below market value. Though the goods that are advertised for sale on the website to which the disputed domain name resolves are not confirmed to be counterfeit, the Complainant has no control over the listings shared and/or

their authenticity. The Respondent also uses the same stylized HEY DUDE logo at the top and similar drop-down menus and page navigators as on the Complainant's official website at <heydudeshoes.com>, which is a clear attempt to impersonate the Complainant. The Complainant thus submits that the Respondent uses the disputed domain name to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name and of the Respondent's website.

The Complainant also submits that the Respondent's registration of the disputed domain name was done to prevent the Complainant from registering the disputed domain name and was likely acquired for the purpose of selling the disputed domain name for valuable consideration in excess of any out-of-pocket expenses and/or in an attempt to generate financial gain by creating a likelihood of confusion with the Complainant's mark.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the statements and documents submitted by the parties.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements are satisfied:

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

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences there from as it considers appropriate.

### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark because it contains the mark in its entirety. The addition of the terms "shoes" and "sale" as suffixes to the trademark to form the disputed domain name does not, to this Panel, prevent a finding of confusing similarity. It has also long been held by UDRP panels that the generic Top-Level Domain ("gTLD") is disregarded under the first element confusing similarity test, see 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 conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

### **B. Rights or Legitimate Interests**

According to the Complaint, the Complainant has not licensed or otherwise permitted the Respondent to use its trademark.

Given the circumstances of this case, the Panel is of the opinion that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this and the way the Respondent has been and is using the disputed domain name (see below in Section C) does not support a finding of rights or legitimate interests.

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

### **C. Registered and Used in Bad Faith**

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides an example of circumstances which shall be evidence of registration and use in bad faith:

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

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, in particular the distinctive nature of the Complainant's trademark and the long-time use of the mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. Further, due to the nature and use of the disputed domain name, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name she chose could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name is being used for a website which, *inter alia* by reproducing the Complainant's trademark and logo gives Internet users the impression that the website is an official website of the Complainant or its licensee and that the Respondent is an authorised reseller of the Complainant's products. This is not the case, and the Panel therefore finds that the Respondent by registration and use of the disputed domain name intentionally creates a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the disputed domain name with the purpose of attracting Internet users to the website for commercial gain as per paragraph 4(b)(iv) of the Policy.

Noting that the disputed domain name incorporates a registered and well-established trademark, that no response has been filed, and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name, and considering all the facts and evidence, the Panel therefore finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

## **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 <heydude-shoes-sale.com> be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: November 1, 2022