

ADMINISTRATIVE PANEL DECISION

Daily Sports Aktiebolag v. Xinfra Ou
Case No. D2022-3590

1. The Parties

Complainant is Daily Sports Aktiebolag, Sweden, represented by VAMO Varumärkesombudet AB, Sweden.

Respondent is Xinfra Ou, China.

2. The Domain Name and Registrar

The disputed domain name <cheap-dailysports.com> (“Disputed Domain Name”) 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 September 28, 2022. On September 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 30, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on October 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 25, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 26, 2022.

The Center appointed Richard W. Page as the sole panelist in this matter on October 31, 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 markets clothing under the DAILY SPORTS brand, including headgear. Complainant is the owner of numerous trademark registrations including the words DAILY SPORTS (the “DAILY SPORTS Mark”). The registrations include, without limitation, European Union Trademark No. 018190602 DAILY SPORTS registered in Class 25 on June 13, 2020; United States Trademark No. 6140757 DAILY SPORTS registered in Class 25 on September 1, 2020; and Republic of Korea registration No. 4017934870000 DAILY SPORTS registered in Class 25 on November 1, 2021.

The Disputed Domain Name was registered on March 15, 2022.

5. Parties’ Contentions

A. Complainant

Complainant contends that the Disputed Domain Name is “identical” to the DAILY SPORTS Mark since the word element is fully included in the wording of the Disputed Domain Name. The only difference between the DAILY SPORTS Mark and the Disputed Domain Name is the generic wording “cheap”, which conveys information on the pricing of the goods sold at the website. Complainant further contends that the fact that some of the registrations for the DAILY SPORTS Mark contain figurative elements does not reduce the similarity. Complainant further contends that the relevant public is at risk of perceiving that the Disputed Domain Name is being held by the same holder as the DAILY SPORTS Mark.

Complainant asserts that Respondent should be considered as having no rights or legitimate interests in respect of the Disputed Domain Name. Complainant further asserts that the non-legitimate and unfair use of the Disputed Domain Name will mislead consumers and tarnish the DAILY SPORTS Mark by giving the impression that DAILY SPORTS goods are being sold for a reduced and cheaper price. Complainant further asserts that Respondent has no legitimate interests and takes unfair advantage by misleading consumers by representing itself as the holder of the DAILY SPORTS Mark.

Complainant alleges that it filed its first trademark application in 2017 and registered its <dailysports.com> domain name as early as March 4, 1999. Complainant further alleges that Respondent registered the Disputed Domain Name several years later on March 15, 2022. Complainant further alleges that Respondent acted in bad faith by registering the Disputed Domain Name containing the entirety of the DAILY SPORTS Mark. Complainant further alleges that the webpage at the Disputed Domain Name displays the DAILY SPORTS Mark, as well as appears to sell identical products for a reduced or cheap price. Complainant further alleges that the Disputed Domain Name was registered for the purpose of disrupting the business of Complainant. Complainant further alleges that by creating likelihood of confusion with the DAILY SPORTS Mark, Respondent is attempting to attract Internet users for commercial gain. This has been addressed in a letter sent to Respondent on August 26, 2022 and by the Registrar who have confirmed safe receipt of the email with the letter to Respondent.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

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

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the DAILY SPORTS Mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and,
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant contends that the Disputed Domain Name is identical or confusingly similar to the DAILY SPORTS Mark pursuant to paragraph 4(a)(i) of the Policy.

Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of a trademark is *prima facie* evidence of Complainant having enforceable rights in the DAILY SPORTS Mark.

Complainant has alleged numerous registrations of the DAILY SPORTS Mark, which allegations have not been contested by Respondent.

Therefore, the Panel finds that for purposes of this proceeding Complainant has enforceable rights in the DAILY SPORTS Mark.

Section 1.7 of the [WIPO Overview 3.0](#) says that inclusion of the entire trademark in a domain name will be considered confusingly similar. Section 1.8 of the [WIPO Overview 3.0](#) instructs that the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity. Section 1.11.1 of the [WIPO Overview 3.0](#) instructs that generic Top Level Domains ("gTLDs") such as ".com" may be disregarded for purposes of assessing confusing similarity.

The Panel finds that the entirety of the DAILY SPORTS Mark is contained in the Disputed Domain Name, that the addition of the word "cheap" and the hyphen "-" does not prevent a finding of confusing similarity, and that the gTLD ".com" is a technical requirement disregarded for the purpose of the analysis under this element of the Policy.

Therefore, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant asserts that Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of demonstrating it has rights or legitimate interests in the Disputed Domain Name. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or a legitimate interest in the Disputed Domain Name:

- (i) before any notice to Respondent of the dispute, Respondent's use of, or demonstrable preparations to

use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or

(ii) Respondent (as an individual, business, or other organization) has been commonly known by the Disputed Domain Name, even if Respondent has acquired no trademark or service mark rights; or

(iii) Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the DAILY SPORT Mark.

Complainant asserts that Respondent should be considered as having no rights or legitimate interests in respect of the Disputed Domain Name. Complainant further asserts that the non-legitimate and unfair use of the Disputed Domain Name will mislead consumers and tarnish the DAILY SPORTS Mark by giving the impression that DAILY SPORTS branded goods are being sold for a reduced and cheaper price. Complainant further asserts that Respondent has no legitimate interests and takes unfair advantage by misleading consumers by representing itself as the holder of the DAILY SPORTS Mark.

The Panel finds that these assertions constitute a *prima facie* case that Respondent lacks rights or legitimated interests in the Disputed Domain Name. Respondent has not contested these assertions.

Therefore, the Panel finds that Complainant has satisfied the requirement of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Complainant contends that Respondent registered and is using the Disputed Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

(i) circumstances indicating that Respondent has registered or has acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the DAILY SPORTS Mark or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or

(ii) Respondent has registered the Disputed Domain Name in order to prevent the owner of the DAILY SPORTS Mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) 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, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with the DAILY SPORTS Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on Respondent's website or location.

Complainant alleges that it filed its first trademark application in 2017 and registered its <dailysports.com> domain name as early as March 4, 1999. Complainant further alleges that Respondent registered the Disputed Domain Name several years later on March 15, 2022. Complainant further alleges that Respondent acted in bad faith by registering the Disputed Domain Name containing the entirety of the DAILY SPORTS Mark. Complainant further alleges that the webpage at the Disputed Domain Name displays the DAILY SPORTS Mark, as well as appears to sell identical products for a reduced or cheap price. Complainant further alleges that the Disputed Domain Name was registered for the purpose of disrupting the business of Complainant. Complainant further alleges that by creating likelihood of confusion with the DAILY

SPORTS Mark, Respondent is attempting to attract Internet users for commercial gain. This has been addressed in a letter sent to Respondent on August 26, 2022 and by the Registrar who have confirmed safe receipt of the email with the letter to Respondent.

The Panel finds that Complainant has shown the required elements of paragraph 4(b)(iv) of the Policy. Therefore, Complainant has met the requirements of paragraph 4(a)(ii) 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 Disputed Domain Name <cheap-dailysports.com> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: November 14, 2022