

ADMINISTRATIVE PANEL DECISION

Pole Junkie Ltd v. 玉兰李
Case No. D2022-3731

1. The Parties

The Complainant is Pole Junkie Ltd, United Kingdom (“UK”), represented by Adlex Solicitors, UK.

The Respondent is 玉兰李, China.

2. The Domain Name and Registrar

The disputed domain name <pole-junkie.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 October 6, 2022. On October 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 2022, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on October 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 1, 2022.

On October 26, 2022, the Complainant requested the addition of the domain name <junkiepole.shop> to the Complaint (the “Second Domain Name”). On October 31, 2022, the Complainant sent another email communication regarding the Second Domain Name.

The Center appointed Mihaela Maravela as the sole panelist in this matter on November 8, 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.

After the Panel's appointment, on November 8, 2022, the Center transmitted by email a request for registrar verification to the Registrar for the Second Domain Name, NameSilo, LLC. On November 8, 2022, the Registrar for the Second Domain Name informed the Center that it does not have information on the registrant's name or organization, and that the only information it has regarding the registrant of the Second Domain Name is the email address, which is different from that of the registrant of the disputed domain name.

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

According to the information in the Complaint, the Complainant has carried on the business of retailing clothing and accessories for pole dancing under the name "PoleJunkie" since 2015. The Complainant trades worldwide.

The Complainant is the owner of the UK trademark plus device POLEJUNKIE, registered on December 15, 2017, under no. 00003257991 for classes 25, 28, and 35. The Complainant operated its main website at "www.polejunkie.co.uk" which currently redirects to its website at "www.polejunkie.com" and it also operates a website at "www.eu.polejunkie.com".

The disputed domain name was registered on August 8, 2022, and at the date of the Complaint it resolved to a website displaying an identical copy of the Complainant's POLEJUNKIE trademark logo, copying the look and feel of the Complainant's official website, and selling goods in direct competition with the Complainant. The disputed domain name does not resolve to an active website at the date of the Decision.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is identical or confusingly similar to its trademark, disregarding the domain suffix and the hyphen.

As regards the second element, the Complainant argues that it has never authorised or licensed the Respondent to use the Complainant's trademarks. The Respondent has used the disputed domain name to attract, confuse and profit from Internet users seeking the Complainant, by impersonating the Complainant.

With respect to the third element, the Complainant argues that the Respondent had the Complainant and its business in mind when registering and using the disputed domain name given that the Respondent impersonated the Complainant. The Complainant also argues that the Respondent registered the disputed domain name for the purpose of unfairly disrupting the business of the Complainant by diverting business intended for the Complainant. The Respondent set out to create a likelihood of confusion by registering a domain name comprising the Complainant's trademark and using it for a website which is branded with the Complainant's name and logo, and which copies the menu links and general look and layout from the Complainant's website. The Complainant has been contacted by several customers who have mistakenly placed orders with the Respondent, thinking it was the Complainant, and then contacted the Complainant after becoming become aware that the website at the disputed domain name was not genuine.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

The Complaint was filed with regard to the disputed domain name <pole-junkie.com>. After the notification of the Complaint, the Complainant sent an email to the Center requesting permission to amend the Complaint to include reference to the Second Domain Name, <junkiepole.shop>. In arguing for consideration of the addition of the Second Domain Name, the Complainant noted that the Second Domain Name had been registered the day after this Complaint was filed and the website at the Second Domain Name was identical to that at the disputed domain name, though the website was suspended upon the Complainant's update to the Center on October 31, 2022.

In view of the circumstances of the case, particularly the discrepancy between the contact details of the registrant for the disputed domain name, on the one hand, and that for the Second Domain Name, on the other hand, as well as the lack of registrant name and other information for the Second Domain Name, and also taking into account the requirements of the Rules for the proceedings to take place with due expedition, the Panel declines to accept the Complainant's request for the addition of the Second Domain Name in this proceeding. See section 4.12.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and also paragraph 10(c) of the Rules.

The Panel notes that its decision not to add the Second Domain Name to this proceeding is made without prejudice to the Complainant bringing a separate complaint if it desires.

The Panel will continue its Decision with respect to the disputed domain name. No communication has been received from the Respondent in this case. However, given that notice of the Complaint was sent to the relevant address 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". The courier attempting delivery of the Written Notice was unable to complete delivery. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case. 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.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

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 POLEJUNKIE trademark.

The disputed domain name incorporates the trademark POLEJUNKIE 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 3.0.

It is well accepted by UDRP panels that a generic Top-Level Domain ("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 POLEJUNKIE 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 submitted by the Complainant, the website at the disputed domain name was used to resolve to a website that featured the Complainant's trademark and logo, while offering competing products for sale. According to unrebutted evidence in the case file, customers have been misled when attempting to purchase goods from the website at the disputed domain name. The Respondent has not rebutted this serious contention of the Complainant. In the Panel's view, such use does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. See [WIPO Overview 3.0](#), section 2.13.1.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

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 formally 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 resolved to a website reproducing the Complainant's trademark and logo. Given the distinctiveness 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.

As regards the use, the disputed domain name resolved to a website where the Complainant's trademark and logo were displayed, replicating the look and feel of the Complainant's website, while offering competing products for sale. According to the un rebutted evidence submitted by the Complainant, Internet users were proven to be actually confused by the activities of the Respondent. The Panel is of the view that in light of the Respondent's use of the disputed domain name, paragraph 4(b)(iv) of the Policy applies, in that bad faith registration and use can be found in respect of a disputed domain name, where a 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 a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

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.

The Panel finds that the passive holding of the disputed domain name at the date of the Decision does not in the circumstances of this case prevent a finding of bad faith.

The Panel also notes that false or incomplete contact details were provided by the Respondent to the Whois database which is an additional indication of bad faith in the circumstances of this case.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. 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, <pole-junkie.com>, be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: November 22, 2022