



ADMINISTRATIVE PANEL DECISION

Topaz International Imalat Ve Dis Ticaret Limited Sirketi v. Lin Zhibin, FRY
Case No. D2022-4057

1. The Parties

The Complainant is Topaz International Imalat Ve Dis Ticaret Limited Sirketi, Turkey, represented by Pryor Cashman, LLP, United States of America.

The Respondent is Lin Zhibin, FRY, United States of America.

2. The Domain Name and Registrar

The disputed domain name <thegurhan.com> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 28, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 31, 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 amendment to the Complaint on November 1, 2022.

The Center verified that the Complaint together with the amendment to 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 November 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 1, 2022.

The Center appointed Dennis A. Foster as the sole panelist in this matter on December 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.

4. Factual Background

Located in Turkey, the Complainant is a company that produces and markets jewelry throughout the world. The Complainant conducts its operations through its GURHAN trademark and service mark, which are registered with several trademark authorities, including the United States Patent and Trademark Office ("USPTO") (e.g. Registration No. 2,486,236; registered on September 4, 2001).

The Respondent is the owner of the disputed domain name, <thegurhan.com>, which was created on July 28, 2022. The disputed domain name resolves to a website that closely resembles the website attached to the Complainant's domain name, <gurhan.com>, with both prominently displaying the Complainant's mark and presenting jewelry products for sale.

5. Parties' Contentions

A. Complainant

- The Complainant is a company that was founded and is operating in Turkey. The Complainant produces and sells jewelry made from gold, silver and precious stones, including diamonds. Having marketed its distinctive hand-hammered jewelry pieces for more than twenty years, the Complainant conducts business throughout the world under its GURHAN mark, which is registered in many jurisdictions, including with the USPTO. The Complainant also operates through its website found at <gurhan.com>.

- The disputed domain name, <thegurhan.com>, is confusingly similar to the Complainant's GURHAN mark, as the mark is contained completely within that name. The inclusion of the generic term, "the", fails to create any meaningful distinction between the disputed domain name and the mark. Moreover, the addition of the ".com" generic Top-Level Domain ("gTLD") also does not reduce the confusing similarity, as it is well established that such an addition is not relevant in assessing whether a disputed domain name is identical or confusingly similar to an established mark.

- The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has neither authorized the Respondent as a representative, agent or licensee nor consented to the Respondent's use of the Complainant's mark within a domain name. There is no evidence that the Respondent is commonly known as the disputed domain name. Furthermore, the disputed domain name is not used for a *bona fide* offering of goods or services, because the website attached to the disputed domain name mimics that of the Complainant, including the Complainant's mark and solicitations to buy jewelry items (possibly counterfeits of the Complainant's goods). That website also attempts to illegitimately collect personal information from Internet users through an email address, which is nearly identical to the Complainant's email address, and an unauthorized telephone number.

- The Respondent registered and is using the disputed domain name in bad faith. The Complainant's mark is world famous, and thus registration and use of a confusingly similar domain name by an unaffiliated entity is a presumptive case of bad faith. Moreover, the Respondent's bad faith is evidenced by its undoubted knowledge of the Complainant's mark. Also, the use of the confusingly similar disputed domain name by the Respondent for monetary profit is conclusive evidence that the Respondent has intentionally sought commercial gain through the likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation or endorsement of the Respondent's website. Finally, the Respondent registered the disputed domain name through a privacy service in a bad faith attempt to hide its identity.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraphs 4(a)(i) - (iii) of the Policy, the Panel may find in favor of the Complainant and grant a transfer of the disputed domain name, <thegurhan.com>, provided the Complainant proves that:

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

A. Identical or Confusingly Similar

The Complainant has presented the Panel with clear evidence of the Complainant's service mark registration with the USPTO for the GURHAN mark, so the Panel finds that the Complainant has satisfied the requirement under Policy paragraph 4(a)(i) that it has rights in that mark. See *LO 337 IP Holding, LLC v. John Williams, J Entertainment ATL / John Williams, J*, WIPO Case No. [D2019-2339](#) ("The Panel concludes that Complainant has rights in the mark WORLD STAR HIP HOP through registration with the USPTO."); and *The Schneider Group, Inc. v. Jack Mann*, WIPO Case No. [D2010-0448](#) ("The Panel finds that Complainant has established rights in the PROTEK mark under Policy paragraph 4(a)(i) through its registration with the USPTO.").

In assessing whether the disputed domain name, <thegurhan.com>, is identical or confusingly similar to the Complainant's GURHAN mark, the Panel first notices that the mark is fully contained within the disputed domain name. Moreover, the Panel determines that the mere addition of the generic article "the" does not prevent the mark from being recognizable within the disputed domain name. Also, the additional ".com" gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Consequently, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's GURHAN mark. See *Zacks Investment Research, Inc. v. Domains By Proxy, LLC / James Ross*, WIPO Case No. [D2022-2117](#) (finding <thezacks.com> to be confusingly similar to the ZACKS mark); and *Compagnie Générale des Etablissements Michelin v. Privacy Protection*, WIPO Case No. [D2022-1162](#) (finding <themichelin.com> to be confusingly similar to the MICHELIN trademark).

As a result, the Panel finds that the Complainant has proved that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Although the Policy states that a complainant bears the burden of proving that a respondent has no rights or legitimate interests in a disputed domain name, due to the extreme difficulty of proving a negative proposition, the consensus of UDRP decisions is that a complainant need present only a *prima facie* case that the respondent lacks those rights and interests before shifting the burden to the respondent to provide a rebuttal. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1.

The Complainant asserts that it has not granted any authorization or consent for the Respondent to use the Complainant's mark for any reason or in any manner. The Complainant has also convinced the Panel that the disputed domain name is confusingly similar to that mark. Therefore, the Panel concludes that the Complainant has made an acceptable *prima facie* case that the Respondent has no rights or legitimate

interests in the disputed domain name. See, *Spencer Douglass, MGA v. Bail Yes Bonding*, WIPO Case No. [D2004-0261](#) (“...the Complainant has not licensed or otherwise authorized the Respondent to use the [Complainant’s] marks [...] this suffices to make a *prima facie* showing for purposes of Paragraph 4(a)(ii) that the Respondent lacks rights or legitimate interests in the disputed domain name.”).

The Respondent has failed to file a Response and thus presents no evidence to rebut the Complainant’s *prima facie* case. However, the Panel nevertheless will review the record for evidence that might support a coherent rebuttal, taking into account that all reasonable evidence found in the Complaint will be accepted as true. See, [WIPO Overview 3.0](#), section 2.1 (“The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed.”).

Under Policy paragraph 4(c)(i), the Respondent might prevail in this case if it could show that the disputed domain name is being used, or that there are demonstrable preparations for its use, in connection with “a *bona fide* offering of goods or services”. However, the Complaint provides clear evidence, which is accepted as true by the Panel, that the disputed domain name is used by the Respondent to host a website that resembles that of the Complainant, contains the Complainant’s mark, and offers for sale jewelry that would compete directly with that offered for sale by the Complainant. The Panel cannot possibly find that this usage conforms with the requirements of paragraph 4(c)(i). See, *Puma SE v. Internet Domain Services BS Corp / Joan Gonzalez*, WIPO Case No. [D2020-2747](#) (“The Respondent’s use of the disputed domain name in connection with an online store in which the Complainant’s trademark is reproduced, offering for sale what appear to be counterfeit goods cannot be considered a *bona fide* offering of goods or services...); and *Herno S.p.A. v. Melissa Birkholz*, WIPO Case No. [D2020-0162](#) (“...where the content of the respondent’s website appears to be designed to reinforce the Internet user’s impression that the domain name belongs to the complainant, or the website is presented as if it was an official website of the complainant, such use cannot constitute a *bona fide* offering of goods or services.”).

Also, Policy paragraph 4(c)(ii) does not apply in this proceeding because there is no documented reason for the Panel to believe that the Respondent, Lin Zhibin, FRY is commonly known as the disputed domain name, <thegurhan.com>.

Furthermore, as the Respondent has attached to the disputed domain name a website that mimics that of the Complainant and attempts to collect sales revenue, the Panel concludes that the Respondent is not making a “legitimate noncommercial or fair use” of the disputed domain name per paragraph 4(c)(iii) of the Policy. See *Instagram, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Hamid Sarwary*, WIPO Case No. [D2020-1730](#) (“...impersonating the Complainant can hardly be a legitimate or fair use.”).

Since the Panel cannot find within the record a reasonable rebuttal to the Complainant’s *prima facie* case, the Panel determines that that case is conclusive in favor of the Complainant.

As a result, the Panel finds that the Complainant has proved that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Policy paragraph 4(b)(iv) sets forth a criterion that the Panel might apply in determining whether the disputed domain name was registered and is being used in bad faith as follows:

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.

In this case, the Panel has determined that the disputed domain name is confusingly similar to the Complainant's mark. Moreover, the Panel finds that the Respondent is using the disputed domain name's resolving website, which closely resembles the Complainant's own website, for an intentional attempt to realize commercial gain. Given these various distinct similarities, and the resulting likelihood of confusion for Internet users, the Panel finds that the disputed domain name was registered and is being used by the Respondent in bad faith pursuant to Policy paragraph 4(b)(iv). See *Instagram, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Hamid Sarwary, supra* ("The Panel finds that in using the disputed domain name in connection with such a 'clone' website, the Respondent intentionally created a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website within the meaning of paragraph 4(b)(iv) of the Policy."); and *Swarovski Aktiengesellschaft v. WhoisGuard Protected / Peter D. Person*, WIPO Case No. [D2014-1447](#).

Also, the Panel concludes that the Respondent's use of a privacy service to prevent disclosure of its identity relative to the disputed domain name is a further indication that the disputed domain name was registered and is being used in bad faith. See *LPG Systems v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2016-0565](#) ("It is a consensus view among the UDRP panelists that using such privacy services is a factor indicating bad faith.").

As a result, the Panel finds that the Complainant has proved that the disputed domain name was registered and is being used in bad faith.

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, <thegurhan.com>, be transferred to the Complainant.

/Dennis A. Foster/

Dennis A. Foster

Sole Panelist

Date: December 22, 2022