

ADMINISTRATIVE PANEL DECISION

Allbirds, Inc. v. Richard Neal

Case No. D2022-4111

1. The Parties

The Complainant is Allbirds, Inc., United States of America, represented by IPLA, United States of America (the “United States”).

The Respondent is Richard Neal, Germany.

2. The Domain Name and Registrar

The disputed domain name <allbirdnewzealand.com> (the “Domain Name”) is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 1, 2022. On November 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 3, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 7, 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 7, 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 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 29, 2022.

The Center appointed Jeremy Speres as the sole panelist in this matter on December 7, 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

The Complainant is a footwear and apparel company based in the United States that has been trading under the ALLBIRDS trade mark since 2016. The Complainant trades via its online and bricks and mortar stores on four continents. The Complainant's ALLBIRDS mark has been recognised as being well-known by a prior UDRP panel: *Allbirds, Inc. v. Domain Administrator*, See [PrivacyGuardian.org](https://www.privacyguardian.org/) / *Dominik Hofmann, Doreen Eisenberg, Daniel Walter, Claudia Baecker, Franck Barth, Luca Foerster, Marko Dietrich, Kathrin EICHMANN, David Zinczenheim, Antje SCHROEDER, Daniel PROPST*, WIPO Case No. [D2021-3935](#).

The Complainant owns trade mark registrations for the ALLBIRDS mark in many jurisdictions, including, importantly for this matter, in Germany (the Respondent's country, covered by a European Union Trade Mark) and New Zealand (part of the Domain Name):

- European Union Trade Mark registration number 1303983 ALLBIRDS stylised in class 25, with the registration date April 15, 2016;
- New Zealand trade mark registration number 1523654 ALLBIRDS word in classes 9, 25 and 35, with the registration date February 14, 2020.

The Domain Name was registered on May 7, 2021, and resolves to a website prominently entitled "allbirds", and "Allbird New Zealand", ostensibly offering the Complainant's products for sale using the Complainant's logo, trade marked product names, and product imagery.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its ALLBIRDS mark, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that the Domain Name is used to impersonate the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant's registered ALLBIRDS mark is wholly contained within the Domain Name with only the "s" missing. Where the trade mark is recognisable within the disputed domain name (as in this case), the addition of other terms (including geographical terms) does not prevent a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.8). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant's un rebutted evidence establishes that its ALLBIRDS mark was registered and well known prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant's mark and the Complainant has certified that the Domain Name is unauthorised by it.

The general impression created by the Domain Name's website, including use of the Complainant's distinctive logo, product imagery and trade marked product names, is one of impersonation of the Complainant. The Panel has also independently established that 15 independent security vendors have flagged the Domain Name for phishing or other malicious activity. UDRP Panels have categorically held that the use of a domain name for illegal activity (e.g. impersonation and phishing) can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#) at section 2.13).

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an un rebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

C. Registered and Used in Bad Faith

The Domain Name's website clearly and intentionally impersonates the Complainant. In light of this and the composition of the Domain Name featuring the Complainant's well-known mark (minus the "s"), the Respondent must have had the Complainant in mind when registering and using the Domain Name. The fact that 15 independent security vendors have flagged the Domain Name for phishing or other malicious activity supports the conclusion that the Respondent was *mala fide* when registering and using the Domain Name, in particular, the conclusion that the Respondent must have sought to impersonate the Complainant for commercial gain, falling squarely within paragraph 4(b)(iv) of the Policy.

The Panel has independently established that the Complainant has brick and mortar stores in New Zealand (see the Domain Name) and Berlin, Germany (the Respondent's city). Thus, the Respondent may well have been exposed to the Complainant's mark within his city, and in all probability he sought to capitalise on the presence of the Complainant in New Zealand by creating the impression that the Domain Name was associated with that presence.

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3). The Complainant has satisfied paragraph 4(a)(iii) 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 Domain Name, <allbirdnewzealand.com>, be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: December 20, 2022