

ADMINISTRATIVE PANEL DECISION

NPS (Shoes) Limited v. beats

Case No. D2022-4732

1. The Parties

The Complainant is NPS (Shoes) Limited, United Kingdom, represented by Howes Percival LLP, United Kingdom.

The Respondent is beats, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <solovair.com> is registered with Megazone Corp., dba HOSTING.KR (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on December 9, 2022. On December 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 13, 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.

On December 13, 2022, the Center notified the Parties in both English and Korean that the language of the registration agreement for the disputed domain name is Korean. On December 16, 2022, the Complainant filed a request for English to be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and in Korean, and the proceedings commenced on December 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 11, 2023.

The Center appointed Ik-Hyun Seo as the sole panelist in this matter on January 18, 2023. 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 manufacturer of shoes, shoe accessories, and leather goods, which was incorporated as a registered company in England and Wales. The Complainant and its predecessor has produced goods under the SOLOVAIR brand since the 1950s and the goods are distributed worldwide. Most notably, the Complainant produced footwear for the Dr. Martens brand from 1960 to the 1990s called “Dr Martens made by Solovair”, and currently manufactures its own line of products as well as for brands such as George Cox and Vegetarian Shoes. The Complainant has a trademark registration for SOLOVAIR in the United Kingdom registered on June 23, 1995 (Reg. No. UK00001581740) and an international trademark registered on January 5, 2012 (Reg. No. 1120647).

The Respondent appears to be an entity with an address in the Republic of Korea.

The disputed domain name was registered on January 10, 2012, and resolved to a page with pay-per-click links to footwear as of the date of filing of the Complaint.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical to the SOLOVAIR trademark in which the Complainant has rights.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant states that the disputed domain name is linked to a website containing advertisement links to shoes with a “buy this domain” notice, and contends that it is not in use and has never been in use in connection with a legitimate noncommercial or fair use, nor with a *bona fide* offering of goods and services.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith. Specifically, the Complainant contends that SOLOVAIR is a coined term and it is inconceivable for the Respondent to have registered the disputed domain name without being aware of the Complainant and its trademark. Rather, the Complainant contends that the Respondent registered the disputed domain name in order to capitalize on the significant reputation of the Complainant’s trademark for its own commercial gain; specifically, the Complainant asserts that the Respondent’s use of the disputed domain name to display pay-per-click links to boots and shoes which are the exact goods of the Complainant creates a likelihood of confusion with the Complainant and its trademark for the Respondent’s own commercial gain. In addition, the Complainant notes that the Respondent has been the respondent in a number of prior WIPO UDRP decisions and found to have engaged in a pattern of preventing trademark holders from reflecting their marks in domain names, which in and of itself constitutes bad faith.

B. Respondent

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

6. Discussion and Findings

A. Language of Proceedings

Paragraph 11(a) of the Rules provides that the language of the proceeding shall be the language of the registration agreement, unless otherwise agreed to by the parties, subject to the authority of the panel to determine otherwise. In this case, the language of the Registration Agreement is Korean, and both Parties have had an opportunity to argue their positions on this point. The Center issued a notice in Korean and English stating that it would accept the Complaint filed in English, and that the Response would be accepted in either Korean or English. The Respondent subsequently chose not to submit any response.

Both Parties were given the opportunity to submit arguments in the language of their preference, and the language in which to render the decision is reserved for the Panel. The Panel would have considered a Response in Korean, but no Response was submitted. Here, the disputed domain name is composed of Latin characters and the webpage to which the disputed domain name resolved displayed links in English. In addition, according to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1, the Panel can take into consideration prior cases involving the respondent in a particular language. In this regard, there are least nineteen prior WIPO UDRP decisions involving a respondent in the Republic of Korea by the name of "beats" or "Beats", and the panels in all cases rendered decisions in English, deciding that the respondent has sufficient knowledge of English to be able to understand the decision in English, or that he would not be unduly prejudiced by rendering the decision in English. Accordingly, the Panel determines that rendering the decision in English is fair and procedurally efficient, given the circumstances of this case.

B. Identical or Confusingly Similar

The Complainant owns trademark registrations for the term SOLOVAIR. The disputed domain name solely consists of the term "solovair", and is therefore, identical to the Complainant's trademark.

For the reason mentioned above, the Panel finds that the first element has been established.

C. Rights or Legitimate Interests

On the basis of the present record, the Panel finds that the Complainant has made the required allegations to support a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* basis has been established, the Respondent carries the burden of demonstrating its rights or legitimate interests in the disputed domain name. However, the Respondent in this case has chosen to file no response to these assertions by the Complainant, and there is no evidence or allegation in the records that would warrant a finding in favor of the Respondent on this point. Moreover, the disputed domain name is identical to the Complainant's trademark, thus carrying a high risk of implied affiliation to the Complainant.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

D. Registered and Used in Bad Faith

The Panel finds that there is sufficient evidence to find bad faith in this case.

Section 3.1 of the [WIPO Overview 3.0](#) provides that bad faith under the UDRP is "broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark". Here, evidence suggests that the Respondent likely knew of the Complainant when registering the disputed domain name. First of all, the Panel finds that "solovair" is a distinctive term, and the Respondent has given no explanation for having registered this particular term. Further, information on the Complainant and its trademark would have been easily discoverable through an Internet search. In fact, the Panel's Google

search for “solovair” for the ten-year period preceding the date of registration of the disputed domain name showed results which appear to be almost exclusively in connection with the Complainant.

Therefore, without no explanation to the contrary from the Respondent, the Panel finds that the Respondent more likely than not registered the disputed domain name with knowledge of the Complainant and its trademark in order to unfairly profit from the likelihood of association with the Complainant’s trademark and the products using the trademark.

Also, by linking the disputed domain name with a parking page displaying pay-per-click links to boots and shoes that are the very goods of the Complainant, the Respondent created a likelihood of confusion and likely benefited commercially from the confusion of Internet users that visited the site by mistake as per paragraph 4(b)(iv) of the Policy.

Lastly, the Panel takes note of the various prior UDRP decisions rendered against the Respondent that indicate a pattern of bad faith conduct on part of the Respondent, *e.g.*, *Nike Innovate C.V. v. beats*, WIPO Case No. [D2021-3824](#); *LIDL Stiftung & Co. KG v. beats*, WIPO Case No. [D2020-2659](#).

Accordingly, the Panel finds that the third element has been established.

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

/Ik-Hyun Seo/

Ik-Hyun Seo

Sole Panelist

Date: February 1, 2023