

## **ADMINISTRATIVE PANEL DECISION**

Leviton Manufacturing Co., Inc. v. Xuyang Yan  
Case No. D2022-4787

### **1. The Parties**

The Complainant is Leviton Manufacturing Co., Inc., United States of America (“United States”), internally represented.

The Respondent is Xuyang Yan, China.

### **2. The Domain Name and Registrar**

The disputed domain name <levitonshop.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 13, 2022. On December 14, 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 (Registrant/Owner of levitonshop.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 15, 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 December 19, 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 December 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2023.

The Center appointed Zoltán Takács 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**

Founded in 1906, the Complainant is an American manufacturer of electrical wiring equipment, producing electrical lights sockets, receptacles and outlets, switches, dimmers and other electrical products and lighting systems.

The Complainant is, among others, owner of the United States Trademark Registration No. 2726639 for the word mark LEVITON, registered since June 17, 2003, for goods of classes 9 and 11 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

The Complainant owns the domain name <leviton.com>, which was registered on July 18, 1995, and resolves to its corporate website.

The disputed domain name was registered on September 29, 2022, and has been resolving to a website that substantially copies the Complainant's official website (including its trademark, signature logo, texts and product images) and purports to predominantly sell the Complainant's products.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name, which fully incorporates its LEVITON trademark is confusingly similar to it because addition of the term "shop" to the trademark in the disputed domain name is not sufficient to distinguish the disputed domain name from its trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant contends that the Respondent's use of its trademark, logo, text and product images on the website under the disputed domain name shows the Respondent's awareness of its business at the time of registration of the disputed domain name, as well as the Respondent's intent to deceive consumers into believing that it is a website run or controlled by the Complainant.

The Complainant requests that the disputed domain name be cancelled.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

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

#### **A. Identical or Confusingly Similar**

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a nationally or regionally registered trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced evidence of having registered rights in the LEVITON trademark and for the purpose of this proceeding the Panel establishes that the United States Trademark Registration No. 2726639 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assesses whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (in this case ".com") is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The disputed domain name incorporates the Complainant's trademark in its entirety. In view of the Panel, the addition of the term "shop" to the Complainant's trademark does not prevent a finding of confusing similarity between the Complainant's trademark and the disputed domain name.

The Panel finds that the disputed domain name is therefore confusingly similar to the Complainant's trademark and that the first ground of the Policy is established.

#### **B. Rights or Legitimate Interests**

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services; or

- (ii) it has been commonly known by the domain name; or
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent.

As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with the relevant evidence demonstrating its rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds well-established rights in the LEVITON trademark and that it has never authorized the Respondent to use its trademark in a domain name or otherwise.

At the website to which the disputed domain name is resolving the Respondent is prominently using the Complainant’s LEVITON trademark, its signature logo, texts and product images found in the Complainant’s official website without any authorization to do so.

The Panel notes that even if the LEVITON branded products sold on the website to which the disputed domain name resolves are genuine products from the Complainant (an issue on which the Panel makes no finding), the website would still not qualify as fair use.

The Respondent has not only failed to disclose its relationship (or lack of relationship) with the Complainant, but has actively sought to impersonate the Complainant (see sections 2.13.2 and 2.8.1 of the [WIPO Overview 3.0](#)). UDRP panels have categorically held that the use of a domain name for illegal activity, such as impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent (see section 2.13.1 of the [WIPO Overview 3.0](#)).

The Respondent failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter to the Complainant’s *prima facie* case, and the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

- (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.

The Complainant's LEVITON trademark is inherently distinctive for the corresponding goods and unique to the Complainant. A basic Internet search against the disputed domain name returns solely the Complainant and its business. The Respondent reproduced the Complainant's trademark in the disputed domain name and its signature logo, texts and copyrighted materials at the website under the disputed domain name. Thus, it is clear that the Respondent had actual knowledge of the Complainant's business and trademark at the time of registration of the disputed domain name.

The Panel cannot conceive any other reason for the Respondent's decision to register the disputed domain name other than to target the Complainant's business and its LEVITON trademark.

There is no information on the identity of the business behind the website at the disputed domain name and no information whatsoever that could suggest or confirm the business' authenticity.

The Respondent is using the disputed domain name to divert Internet traffic intended for the Complainant to its website in order to gain illegitimate profit through impersonation or false association.

The Panel finds that the Respondent is intentionally attempting to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website at the disputed domain name within the meaning of paragraph 4(b)(iv) of the Policy.

For the reasons set out above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

## **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, <levitonshop.com>, be cancelled.

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: January 31, 2023