

## **ADMINISTRATIVE PANEL DECISION**

Leviton Manufacturing Co., Inc. v. Xuyang Yan  
Case No. D2023-0306

### **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 <levitonsale.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 January 23, 2023. On January 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 2023, 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 (“the registrant/owner of www.levitonsale.com”, and from the Respondent identified by reference to Annex 1 to the Complaint (“Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf”)) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 25, 2023 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 February 1, 2023.

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 February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 2, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on March 10, 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 was founded in 1906 and 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 the owner of several trademark registrations for LEVITON, including the following, as per trademark certificates submitted as evidenced in annex 4 to the Complaint:

- United States trademark registration No. 2726639 for LEVITON (word mark), registered on June 17, 2003, in international classes 9 and 11;
- United States trademark registration No. 4232800 for LEVITON (word mark), registered on October 30, 2012, in international class 11;
- United States trademark registration No. 4573553 for LEVITON (figurative mark), registered on July 22, 2014, in international class 09;
- United States trademark registration No. 4969018 for LEVITON (figurative mark), registered on May 31, 2016, in international class 09;
- United States trademark registration No. 5418948 for LEVITON (figurative mark), registered on March 6, 2018, in international class 11.

The Complainant is also the owner of the domain name <leviton.com>, which was registered on July 18, 1995, and is used by the Complainant to promote its products under the trademark LEVITON.

The disputed domain name was registered on September 29, 2022, and resolves to a website, which has the same look and feel as the Complainant's website, including a virtually identical color scheme, reproduces the Complainant's word and figurative trademarks and is offering for sale purported LEVITON products at discounted prices along with third-party electrical equipment.

The Complainant submits that a customer who purchased items from the website, at the disputed domain name, did not receive the products and inquired the Complainant about the status of his order.

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

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

The Complainant contends that the disputed domain name is confusingly similar to the trademark LEVITON in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the term "sale" and the generic Top-Level Domain ("gTLD") ".com".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is not making legitimate noncommercial or fair use of the disputed domain name, since the disputed domain name resolves to a website which has the same look and feel as the Complainant's website and purports to sell LEVITON products at a substantial discount.

The Complainant contends that the Respondent is in no way affiliated with the Complainant and has not been authorized by the Complainant to register the disputed domain name or use any of the LEVITON trademarks.

Moreover, the Complainant highlights that the Respondent is not commonly known by the disputed domain name since it has no registered trademarks for LEVITON, is not using the word "Leviton" anywhere else and has no other connection to the word.

The Complainant further states that the Respondent is using the trademark LEVITON for commercial gain, misleading customers without providing *bona fide* goods or services, since it is using the disputed domain name to sell unauthorized and potentially counterfeit LEVITON products along with third-party products, consequently creating an association with the Complainant to divert customers from the Complainant's legitimate website and authorized sellers. The Complainant highlights that the Respondent has not even included any contact information, disclaimer, or other indications that would alert an Internet user that the website at the disputed domain name is not authorized, sponsored or operated by the Complainant.

The Complainant submits, as an additional circumstance demonstrating that the Respondent is not making *bona fide* use of the disputed domain name, that a customer who purchased items from the website at the disputed domain name did not receive the products and inquired the Complainant about the status of his order.

With reference to the circumstances evidencing bad faith, the Complainant indicates that, considering the content and use of the disputed domain name, the Respondent was undoubtedly aware of the Complainant at the time of registering the disputed domain name, since the Respondent is not only selling unauthorized and potentially counterfeit LEVITON products, but also only recently registered the disputed domain name, while LEVITON is a globally known brand and the Complainant has been using its trademark LEVITON for over 100 years.

The Complainant emphasizes that, by intentionally registering and using the disputed domain name for its own business, the Respondent intended to divert Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on the Respondent's website. The Complainant also highlights that the Respondent's website contains multiple uses of the LEVITON trademarks and is mimicking the overall look and feel of the Complainant's website.

As a further circumstance evidencing the Respondent's bad faith, the Complainant submits that the Respondent engaged in a pattern of conduct since it also registered the domain name <levitonshop.com>, which was used in the same manner as the disputed domain name and was subject to a prior Complaint according to the Policy (*Leviton Manufacturing Co., Inc. v. Xuyang Yan*, WIPO Case No. [D2022-4787](#)).

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint 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." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

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

The Panel finds that the Complainant has established rights over the trademark LEVITON based on the trademark registrations cited under section 4 above, and the related trademark certificates submitted as evidenced in annex 4 to the Complaint.

It is well accepted that the first element functions primarily as a standing requirement, and that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between a complainant's trademark and the disputed domain name to assess whether the trademark is recognizable within the disputed domain name (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In addition, as found in a number of prior cases decided under the Policy, where a trademark is recognizable within a domain name, the addition of generic or descriptive terms does not prevent a finding of confusing similarity under the first element. See section 1.8 of the [WIPO Overview 3.0](#). Moreover, as indicated in section 1.11.1 of the [WIPO Overview 3.0](#), the applicable gTLD 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.

In the case at hand, the disputed domain name incorporates the trademark LEVITON in its entirety with the mere addition of the term "sale" and the gTLD suffix ".com", which the Panel finds insufficient to exclude the confusing similarity.

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

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

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- "(i) before any notice to you of the dispute, your 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 or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

In the case at hand, the Panel finds that the Complainant has made a *prima facie* case and that the Respondent, by not submitting a Response, has failed to invoke any circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks.

Moreover, there is no element from which the Panel could infer a respondent's right over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel also finds that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert Internet users or to tarnish the Complainant's trademark.

As indicated above, the disputed domain name has been pointed by the Respondent to a website displaying the Complainant's trademarks, imitating the look and feel of the Complainant's official website at <leviton.com> and offering for sale purported LEVITON products at discounted prices, along with third-party products.

The Panel finds that, irrespectively of the nature of the goods offered for sale on the Respondent's website, the Respondent has not been using the disputed domain name in connection with a legitimate, fair use because, besides offering for sale Complainant's products, there are also products of the Complainant's competitors, the Respondent has clearly attempted to impersonate the Complainant, failing to disclose its lack of relationship with the Complainant and reproducing without authorization the related trademarks as well as the layout and contents of the Complainant's website. As stated in section 2.13.1 of the [WIPO Overview 3.0](#), UDRP panels have categorically held that the use of a domain name for impersonation/passing off can never confer rights or legitimate interests on a respondent.

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

As to bad faith at the time of the registration, in view of the prior registration and use of the trademark LEVITON by the Complainant, including online via the Complainant's website at <leviton.com>, and considering that a basic Internet search for LEVITON returns results solely related to the Complainant and its business, the Panel finds that the Respondent was likely aware of the Complainant's trademark.

The circumstance that the disputed domain name has been pointed to a website featuring the Complainant's trademarks and reproducing the layout and contents of the Complainant's official website, providing information about the Complainant's products and offering them for sale, demonstrates that the Respondent was indeed well aware of the Complainant and its trademarks.

The Panel also finds that, by pointing the disputed domain name to a website promoting and offering for sale LEVITON and competing products, publishing the Complainant's trademarks and other content taken from the Complainant's website, whilst failing to accurately and prominently disclose the relationship with the trademark owner and to provide information about the actual website operator, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain, by causing a likelihood of confusion with the trademark LEVITON as to the source, sponsorship, affiliation or endorsement of its website and the products offered therein according to paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the Complainant has proven that the Respondent registered and is using the disputed domain name in bad faith according to 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 disputed domain name <levitonsale.com> be cancelled.

*/Luca Barbero/*

**Luca Barbero**

Sole Panelist

Date: March 27, 2023