

ADMINISTRATIVE PANEL DECISION

Quality Goods Plus Inc v. Moshe Silberman, Hardy Party LLC
Case No. D2023-0904

1. The Parties

The Complainant is Quality Goods Plus Inc, United States of America (“United States” or “U.S”), represented by Garson, Ségal, Steinmetz, Fladgate LLP, United States.

The Respondent is Moshe Silberman, Hardy Party LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <poshsettings.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 1, 2023. On March 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 1, 2023, 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.

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 the 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 March 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2023. The Respondent did not submit any response. The Center thereafter notified the Respondent’s default on April 4, 2023.

The Center appointed William R. Towns as sole panelist on April 24, 2023. The Panel finds it has been properly constituted, and 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. Due to unforeseen circumstances, the Panel has found it necessary to extend the date for the present decision.

4. Factual Background

The Complainant is Quality Goods Plus Inc., the owner of the United States POSH SETTING Trademark, U.S. Reg. No. 5236273, registered July 4, 2017. The Mark consists of standard characters without claim to any particular, font style, size, or color, and with the term “setting” disclaimed, under class 21. The Complainant uses its POSH SETTING trademark in connection with the sale of disposable table plates (according to its website: “Luxury Plastic Tableware For Special Occasions”). The Complainant maintains it has used the POSH SETTING trademark since as early as November 2016.

The disputed domain name was registered in April of 2018 and redirects to a “Smarty had a Party” website and URL and offers services which directly compete with those offered by the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant submits the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant assets rights. According to the Complainant, it has continually used the POSH SETTING trademark, expending financial and business resources to develop the Complainant’s commercial operations. The Complainant further observes that the disputed domain name differs only from the addition of a single letter “s”, and the Respondent is not commonly known by the POSH SETTING mark. According to the Complainant, the Respondent it is not making a legitimate noncommercial or fair use of the disputed domain name but rather is attempting to create a likelihood of confusion with the Complainant’s POSH SETTING mark as to sponsorship, affiliation, or endorsement of the Respondent’s website or other products or service purportedly offered by the Respondent.

B. Respondent

As previously noted, the Respondent did not submit a Response.

6. Discussion and Findings

A. Scope of the Policy

The Policy is addressed to resolving disputes concerning allegations of abusive domain name registration and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. [D2002-0774](#). Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of “the abusive registration of domain names”, also known as “cybersquatting”. *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. [D2000-0187](#). See Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169-177. The term “cybersquatting” is most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of rights in trademarks or service marks. *Id.* at paragraph 170. Paragraph 15(a) of the Rules provides that the panel shall decide a complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the panel deems applicable.

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

- (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 with respect to the domain name; and

- (iii) the domain name has been registered and is being used in bad faith. Conciliation or transfer of the domain name is the sole remedy provided to the complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(a) of the Policy sets forth four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy in turn identifies three means through which a respondent may establish rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the respondent. Thus, the view is that the burden of production shifts to the respondent to come forward with evidence of a right or legitimate interest in the domain name, once the complainant has made a *prima facie* showing. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

- (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 lacks rights or legitimate interests with respect to the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Cancellation or transfer of the domain name is the sole remedy provided to the complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(b) of the Policy sets forth four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy in turn identifies three means through which a respondent may establish rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the respondent. Thus, the view is that the burden of production shifts to the respondent to come forward with evidence of a right or legitimate interest in the domain name, once the complainant has made a *prima facie* showing. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

B. Identical or Confusingly Similar

The Complainant's POSH SETTING mark is clearly recognizable in the disputed domain name. The first element 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 disputed domain name.

Applying this comparison, the Complainant's mark is plainly recognizable – in that it is the mark plus a letter "s" to make a plural variation.

The Panel finds that disputed domain name is confusingly similar to a mark in which the Complainant has rights under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

As noted above, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to come forward with evidence of rights or legitimate interests in a domain name. The Panel is persuaded from the record of this case that a *prima facie* showing under paragraph 4(a)(ii) of the Policy has been made. It is undisputed that the Respondent has not been authorized to use the Complainant's POSH SETTING mark. Regardless, the Respondent has registered the disputed domain name appropriating the Complainant's distinctive POSH SETTING mark, and has pointed the disputed domain name to a website prominently offering goods directly competing with those offered under the Complainant's mark. This is clear evidence of an attempt to unfairly capitalize on the Complainant's mark and cannot support any claim to rights or legitimate interests.

The Panel finds that the Complainant has met its burden under paragraph 4(a)(ii) of the Policy

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the Respondents' documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent 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 the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For the reasons discussed under this and the preceding heading, the Panel considers that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain names within the meaning of paragraph 4(a)(iv) of the Policy. The record is clear that the Respondent had the Complainant's POSH SETTING mark firmly in mind when registering the disputed domain name. The Respondent's registration and use of the domain name appropriating the Complainant's POSH SETTING mark – to redirect to a competing URL to offer competing services – as set forth above clearly is demonstrative of bad faith.

The Panel thus finds the Complainant has satisfied the requirements of 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 <poshsettings.com> be transferred to the Complainant.

/William R. Towns/
William R. Towns
Sole Panelist
Date: May 23, 2023