

ADMINISTRATIVE PANEL DECISION

Sparkle Costumes, Inc. v. Bo Wang
Case No. D2023-1346

1. The Parties

The Complainant is Sparkle Costumes, Inc., United States of America (“United States”), represented by Nolan Heimann LLP, United States.

The Respondent is Bo Wang, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 28, 2023. On March 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 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 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 April 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 3, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on May 9, 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 has its registered seat in the United States and offers particularly apparel, lingerie and Halloween costumes in its online shop.

The Complainant is the owner of the United States Trademark Registration No. 6140700 for PIXIE SPARKLE, registered on September 1, 2020, and covering protection for online retail store services featuring *i.a.* lingerie, bodysuits, jumpsuits, dresses, hosiery, and costumes (Annex 4 to the Complaint). First use of the trademark in commerce is noted in the trademark register as April 18, 2018.

Since 2018, the Complainant further owns and operates its main website at “www.pixiesparkleshop.com” (Annex 5 to the Complaint).

The Respondent is reportedly located in China.

The disputed domain name resolved to a website prominently featuring the Complainant’s PIXIE SPARKLE trademark in combination with its official logo. On the associated website, the Respondent offers allegedly genuine Halloween costumes of the Complainant to drastically discounted prices (Annexes 6 and 9 to the Complaint). Also, most of product pictures on the associated website are original product pictures of the Complainant (Annexes 6 and 9 to the Complaint in comparison to Annexes 7 and 8 to the Complaint). In addition, the overall look and feel as of the associated website causes the impression that it is operated or at least authorized by the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its PIXIE SPARKLE trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and

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

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights in PIXIE SPARKLE.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's PIXIE SPARKLE trademark, as it comprises a significant part of the Complainant's trademark. As stated at sections 1.7 and 1.8 of the [WIPO Overview 3.0](#), where a trademark is recognizable within the disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. In the present case, the use of PIXIE as a significant part of the Complainant's trademark in combination with the article "the" and the term "sale", does, in view of the Panel, not serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant's PIXIE SPARKLE trademark. Quite the opposite, and bearing in mind the look and feel of the associated website, the Panel has no doubt that the creation of a confusingly similar domain name was and is the Respondent's primary intention.

In view of the above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's PIXIE SPARKLE trademark in a confusingly similar way within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a response, the Respondent has further failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c), or provide any other evidence of rights or legitimate interests in the disputed domain name.

In fact, the Panel has no doubt that the Respondent was well aware of the Complainant and its PIXIE SPARKLE trademark before registering and using the disputed domain name. The Panel is convinced that the Respondent deliberately has chosen the disputed domain name to cause confusion with the Complainant

and its Halloween costumes among Internet users. Also, the Panel notes that the nature of the disputed domain name along with the content of the website (reproducing the Complainant's PIXIE SPARKLE trademark in its entirety including its logo and many of the Complainant's original product images), indicates the Respondent's intention to create a risk of affiliation or association with the Complainant and its trademark. It is obvious to the Panel that the disputed domain name is used to impersonate the Complainant, which results in an illicit use that can never confer rights or legitimate interests upon the Respondent. [WIPO Overview 3.0](#), section 2.13.

The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name according to the Policy, paragraph 4(a)(ii) and 4(c).

C. Registered and Used in Bad Faith

The Panel believes that the Respondent deliberately attempted to create a likelihood of confusion among Internet users for illegitimate purposes, particularly for the following reasons.

At the date of registration of the disputed domain name, the Respondent was apparently well aware of the Complainant and its PIXIE SPARKLE trademark. The composition of the disputed domain name and its later use make it even obvious to the Panel that the Respondent had the Complainant and its trademark in mind when registering the disputed domain name.

Also, the Panel finds that the Respondent is using the disputed domain name in bad faith. The Panel particularly notes that the disputed domain name resolves to a website falsely purporting to be operated by the Complainant or at least with its authorization, possibly for phishing purposes or for the purpose of selling counterfeit products to radically cheaper prices than usually asked for the original PIXIE SPARKLE costumes (Annexes 6 and 9 to the Complaint in comparison to Annexes 7 and 8 to the Complaint). In addition, the Panel notes that the Respondent has not published any visible disclaimer on the website associated to the disputed domain name to explain that there is no existing relationship between the Respondent and the Complainant. The Panel rather concludes that the attempt to impersonate the Complainant is *per se* considered as evidence of bad faith.

Taking all facts of the case into consideration, the Panel is convinced that this is a typical cybersquatting case, which the UDRP was designed to stop. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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 <thepixiesale.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: May 23, 2023