

ADMINISTRATIVE PANEL DECISION

Kickers International B.V. v. Brigitte Bellamy
Case No. D2023-1908

1. The Parties

The Complainant is Kickers International B.V., Netherlands, represented by SafeBrands, France.

The Respondent is Brigitte Bellamy, France.

2. The Domain Name and Registrar

The disputed domain name <kickersoutlet-fr.shop> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 27, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 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 (DynaDot Privacy Service) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 2, 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 amended Complaint on May 4, 2023.

The Center verified that the Complaint together with the amended 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 May 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 30, 2023.

The Center appointed Christopher J. Pibus as the sole panelist in this matter on June 5, 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 Dutch company, headquartered in Amsterdam, that has designed and distributed high fashion products around the world in association with its KICKERS trademarks since as early as 1973.

The Complainant owns a global portfolio of KICKERS-formative trademarks which are protected for fashion products including clothing, shoes, bags and accessories.

Examples of its trademark registrations include:

- International Trademark Number 397551, registered March 15, 1973
- International Trademark Number 447506, registered September 3, 1979
- Canadian Trademark Number TMA543171, registered March 28, 2001.

The Complainant also owns various KICKERS-formative domain names, notably <kickers.com>, registered April 2, 1998.

The disputed domain name was registered on October 26, 2022. The disputed domain name resolves to a website that offers for sale what appears to be Complainant's products and reproduces the Complainant's trademarks and logos.

5. Parties' Contentions

A. Complainant

The Complainant submits that it is the owner of well-established rights in the trademark KICKERS based on use and registration in Europe and other countries where it carries on business. The disputed domain name is confusingly similar to the Complainant's registered trademarks, as it is virtually identical except for the addition of the descriptive word "outlet" and the geographic designator "fr" which do not diminish the likelihood of confusion.

With respect to the absence of rights or legitimate interests, the Complainant submits that the Respondent has engaged in a scheme to deceive users who access her website, which has been designed to have the look and feel of the Complainant's retail website, including photographs of original KICKERS products and descriptions which have been copied from the Complainant's promotional materials. The Complainant asserts that the Respondent has never been authorized to engage in this conduct or to adopt a confusingly similar domain name. It further submits that the Respondent is not making a *bona fide* offering of products but rather is using the disputed domain name to divert Internet users who are deceived by the associated website. The Complainant submits that it has put forward viable evidence of the absence of rights or legitimate interests.

With respect to bad faith, the Complainant relies on evidence of the Respondent's impersonation scheme and its look-alike website, to establish targeted and abusive registration and use of the disputed domain name. Based on this misconduct, and on the absence of any explanation or response from the Respondent, the Complainant submits that there is sufficient evidence to support a finding of bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, the Complainant must establish each of the following elements:

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

A. Identical or Confusingly Similar

The Complainant clearly holds relevant ownership rights in the trademark KICKERS, as demonstrated by the registered trademarks enumerated in section 4 above, which were registered as early as 1973, long before the Respondent took any steps to register and use the disputed domain name.

The test for confusing similarity is described as a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name” in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademarks. It is noted that the two earliest registrations relied on by the Complainant include some graphic design elements. In particular International Registration No 397551 consists of the word KICKERS in stylized letters. In the circumstances, the appropriate assessment of confusing similarity involves comparing the alpha-numeric domain name with the textual elements of the relevant mark ([WIPO Overview 3.0](#), section 1.10). The disputed domain name includes the entirety of the textual element of the KICKERS mark with the addition of the descriptive term “outlet” and the letters “fr”. These additions do not prevent a finding of confusing similarity under the first element. The Complainant’s KICKERS trademark is clearly recognizable within the disputed domain name ([WIPO Overview 3.0](#), section 1.8).

The Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although the Policy places on the Complainant the burden of proof to establish the absence of rights or legitimate interests, the practice now recognizes that it is often sufficient for a Complainant to make out a *prima facie* case, which then shifts the burden of production to the Respondent to bring forward evidence to demonstrate the relevant rights or interests. Where the Respondent fails to produce such evidence, the Complainant will be deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1).

In this proceeding, the Complainant has provided detailed evidence of the Respondent’s misconduct in misappropriating the Complainant’s trademark and creating an online store (associated with the disputed domain name) which copies graphic and textual content from the Complainant’s website, all of which is in furtherance of a scheme to deceive users. The documentary evidence shows misappropriation of product images, the Complainant’s distinctive logo and descriptive text, which appear in the Respondent’s so-called “outlet”, although in fact there is no relationship or affiliation between the parties. The totality of the evidence clearly establishes a *prima facie* case of the absence of rights or legitimate interests on the part of the Respondent. Illegal conduct of this nature is highly probative in connection with this issue.

“Panels have categorically held that the use of a domain name for illegal activity (e.g., [...] impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.” ([WIPO Overview 3.0](#), section 2.13.1.)

In the absence of any response from the Respondent, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the disputed domain name constitutes an abusive registration which was registered and is being used in bad faith in order to take advantage of the significance of KICKERS as a well known trademark. The Respondent clearly set out to target the Complainant and to deceive users into believing that its website, associated with the confusingly similar disputed domain name, was in fact a website of the Complainant. The Respondent's website was cunningly adapted so it had the appearance of a legitimate virtual shop for the KICKERS line of products, replicating the lay-out and look-and-feel of the Complainant's website, copying the Complainant's logo in multiple places as well as reproducing product images and promotional descriptions. The website also contains no clarification as to the Respondent's relationship with the Complainant, which also contributes to the likelihood of consumer deception (see *Hugo Boss Trade Mark Management GmbH & Co. KG and HUGO BOSS AG v. Li Chen*, WIPO Case No. [D2016-2143](#)). Moreover, the Respondent's bad faith goes beyond the unauthorized reproduction of the website by pricing items at extremely low levels.. This practice leads the Complainant to believe the marketed goods are counterfeit.

[WIPO Overview 3.0](#), section 3.4 recognizes this type of use of deceptive impersonation websites as probative evidence of bad faith (see *Magna International Inc. v. Stefan Polisky*, WIPO Case No. [D2021-0875](#)).

Accordingly the Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating a likelihood of confusion with the Complainant's KICKERS mark, as to the source, sponsorship, affiliation or endorsement of the website and products offered on it, under paragraph 4(b)(iv) of the Policy.

The Complainant has satisfied 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, <kickersoutlet-fr.shop>, be transferred to the Complainant.

/Christopher J. Pibus/

Christopher J. Pibus

Sole Panelist

Date: June 16, 2023