

ADMINISTRATIVE PANEL DECISION

4 Pillar Dynasty, LLC v. Dandan Yang

Case No. D2023-2159

1. The Parties

The Complainant is 4 Pillar Dynasty, LLC, United States of America ("United States"), represented by Ostrolenk Faber LLP, United States.

The Respondent is Dandan Yang, China.

2. The Domain Name and Registrar

The disputed domain name <90degreereflex.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 May 16, 2023. On May 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 18, 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 June 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 12, 2023.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on July 20, 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, 4 Pillar Dynasty, LLC, has specialized in the production and development of nylon spandex, poly spandex and cotton spandex clothing for more than thirty years. Its products are offered and sold through nationally recognized retailers throughout the United States, Canada and Mexico.

The Complainant owns several trademark registrations including the following:

- United States Trademark Registration No.4206795 REFLEX, registered on September 11, 2012, in class 25;
- United States Trademark Registration No. 4238283 90° DEGREE BY REFLEX, registered on November 6, 2012, in class 25;
- United States Trademark Registration No. 5591659 POWER REFLEX, registered on October 23, 2018, in class 25;
- United States Trademark Registration No. 5516951 YOGA REFLEX, registered on July 17, 2018, in class 25.

In addition, the Complainant owns the domain name <90degreebyreflex.com> since December 1, 2012, which resolves to its retail website launched that same month.

The disputed domain name <90degreeflex.com> was registered on July 19, 2022 and resolves to a website that offers similar products to those of the Complainant at discounted prices.

5. Parties' Contentions

A. Complainant

The Complainant, in essence, claims that the disputed domain name is confusingly similar to the trademark 90° DEGREE BY REFLEX in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Respondent's website to which the disputed domain name resolves is an imitation of the Complainant's website in which it offers identical products to those of the Complainant. However, upon information and belief, the Respondent takes orders from consumers but does not ship the ordered products. In other words, the Respondent blatantly rips off consumers.

The Respondent's imitation website shows the Complainant's trademark 90° DEGREE BY REFLEX with the "BY" partially blurred or darkened.

The Respondent's website lists the address "2960 Viking Drive, Columbus OH, United States (US) 43215", which, upon information and belief does not exist. There is not even a "Viking Drive" in Columbus OH.

The Respondent is pretending to be the Complainant and to offer the Complainant's authentic products. However, the Respondent's website exists only to scam consumers and to harm the Complainant by tarnishing its 90° DEGREE BY REFLEX trademark.

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is almost identical and confusingly similar to the Complainant's 90° DEGREE BY REFLEX trademark.

The disputed domain name incorporates the Complainant's trademark 90° DEGREE BY REFLEX with the omission of "BY" which certainly does not prevent a finding of confusing similarity between the Complainant's trademark and the disputed domain name.

The generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark 90° DEGREE BY REFLEX and that the requirements of paragraph 4(a) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's 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) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 6.C of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): “Fundamentally, a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry”. Here, the nature of the disputed domain name carries a risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights nor legitimate interests in the disputed domain name and that the requirements of 4(a)(ii) of the Policy are fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant’s trademark 90° DEGREE BY REFLEX mentioned in section 4 above (Factual Background) when it registered the disputed domain name on July 19, 2022. By that time, the Complainant had long ago registered and used the trademark 90° DEGREE BY REFLEX.

By registering the disputed domain name, which is almost identical to the Complainant’s trademark 90° DEGREE BY REFLEX, the Respondent was targeting the Complainant and its business. The use of the disputed domain name to resolve to a website that imitates the Complainant’s website and offers goods similar to those offered by the Complainant, contributes to confuse Internet users and leads them to think that the relevant website belongs to or is endorsed by the Complainant with the intention to capitalize on the fame of the Complainant’s trademark for its own benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name, the nature of the disputed domain name, the passing-off of the Complainant, and the use of the disputed domain name to resolve to a website offering goods which compete with those offered by the Complainant, are indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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 <90degreereflex.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: August 3, 2023