

ADMINISTRATIVE PANEL DECISION

Sniffies, LLC v. Polo Kem
Case No. D2023-2487

1. The Parties

The Complainant is Sniffies, LLC, United States of America (“United States”), represented by Hanson Bridgett LLP, United States.

The Respondent is Polo Kem, Kazakhstan.

2. The Domain Name and Registrar

The disputed domain name <sniffies.club> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2023. On June 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 8, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 11, 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 June 13, 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 June 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 7, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on July 13, 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 based in Delaware, United States, providing online platforms such as the SNIFFIES online dating and social meetup platform, launched on February 2017 and available at <sniffies.com> (registered on January 31, 2015).

The Complainant has offered its social platform and online dating services under the SNIFFIES mark in the United States, as well as in United Kingdom, Ireland, Canada, Israel, Andorra, Switzerland, South Africa, Italy, Mexico, Spain, Costa Rica, Austria, Australia, Netherlands, Germany, Norway, Puerto Rico, Belgium, Finland, Portugal, Japan, Denmark, Luxembourg, New Zealand, France, Brazil, Sweden, Greece, Guam, Guatemala, Belize, Honduras, Nicaragua, Panama, Colombia, Ecuador, Venezuela, Peru, Bolivia, Chile, Argentina, Paraguay, Uruguay, El Salvador, Cuba, Bahamas, Haiti, Dominican Republic, Antigua and Barbuda, Dominica, French Guiana, Saint Lucia, Saint Vincent and Grenadines, Barbados, Grenada, Trinidad and Tobago, Suriname, and Guyana.

The Complainant is the owner of the following, amongst others, trademarks (Annex 3 to the Complaint):

- United States trademark registration No. 6,820,819, for SNIFFIES, filed on August 10, 2021 and registered on August 16, 2022, claiming first use in commerce in February 1, 2017, in classes 38, 42 and 45;
- United States trademark registration No. 7,039,755, for SNIFFIES, filed on August 10, 2021 and registered on May 2, 2023, in class 25;
- International trademark registration No. 1637832, for SNIFFIES, registered on November 5, 2021, in classes 9, 25, 42 and 45; and
- Australia trademark registration No. 2184028, for SNIFFIES, registered on June 3, 2021, in classes 9, 25, 42 and 45.

The disputed domain name was registered on April 6, 2023 and presently does not resolve to an active webpage. The disputed domain name has been used in connection with a fraudulent attempt to impersonate the Complainant on the Complainant's own platform, having sent direct messages to the Complainant's users inviting them into visiting the disputed domain name which would redirect the users to randomized URLs, including websites that appear to be competing, third-party dating websites such as <buddygays.com> and <gaysgodating.com>, and obtain credit card information from users in exchange for nonexistent subscriptions (Annex 11 to the Complaint).

5. Parties' Contentions

A. Complainant

According to the Complainant, its SNIFFIES platform is a social platform and online dating service with geolocation capabilities marketed to the gay male market, allowing users to share their geographic location and see other users on a map based on their geographic proximity, also allowing users to send direct messages to each other based on their geographic proximity, as well as post messages on a board that is visible to other users nearby and post listings for scheduled meet-up events.

The Complainant asserts that long before the Respondent registered the disputed domain name, and by virtue of the Complainant's widespread use, promotion, and recognition, the SNIFFIES mark became a well-known symbol among the general public as representing the Complainant and its goods and services, having thus the SNIFFIES mark become an asset of incalculable value to the Complainant.

Under the Complainant's view, the disputed domain name is identical and therefore confusingly similar to the Complainant's SNIFFIES trademark.

Also according to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name given that:

- (i) the Respondent is not known by "sniffies" or "sniffies.club," nor could the Respondent have developed any common-law trademark rights in the Complainant's senior and well-known trademarks;
- (ii) the Respondent is not affiliated with the Complainant, not having the Complainant licensed or permitted the Respondent to use the SNIFFIES mark or any domain names incorporating it;
- (iii) the Respondent has employed the disputed domain name as part of a fraudulent scheme to pass off as or impersonate the Complainant on the Complainant's platform and deceive the Complainant's users into visiting the disputed domain name which would then redirect the users to randomized URLs, including websites that appear to be competing, third-party dating websites such as <buddygays.com> and <gaysgodating.com> and obtain credit card information from users in exchange for nonexistent subscriptions (Annex 11 to the Complaint);
- (iv) the Complainant's copyright-protected images have also been used by the Respondent in the direct messages sent, aiming to misdirect Internet users; and
- (v) the Respondent is not using the disputed domain name in a noncommercial manner, nor in a way that could be characterized as a legitimate fair use without intent for commercial gain, nor for a *bona fide* offering of goods or services under the Policy.

The Complainant contends that the registration of the disputed domain name was done clearly in a deliberate attempt to deceive third parties as to the Respondent's identity or connection with the Complainant, in order to disrupt the Complainant's legitimate business by misdirecting its customers through deceit, what is evidenced by the copyright infringement made by the Respondent when reproducing and manipulating the Complainant's copyright-protected marketing imagery to add references to the disputed domain name, in what is clearly a deliberate attempt to deceive users. Undoubtful knowledge of the Complainant and its rights is further evidenced, according to the Complainant, in view of the fact that the Respondent has already been found guilty in a recent URDP case (*Sniffies, LLC v. Polo Kem*, WIPO Case No. [D2023-1532](#) (decided June 1, 2023)).

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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 has been registered and is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking,

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.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

In the present case, the Panel further notes that the Respondent's choice to retain a privacy protection service and provide what appear to be false contact information, not being the Center able to deliver the Written Notice to the address indicated, are further indicatives of the Respondent's bad faith, as well as the Respondent appearing to have engaged in a pattern of bad faith conduct, as seen above.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <sniffies.club> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: July 25, 2023