

ADMINISTRATIVE PANEL DECISION

Civil Clothing Inc. v. Muhammad Ahmed

Case No. D2023-2528

1. The Parties

The Complainant is Civil Clothing Inc., United States of America (“United States”), internally represented.

The Respondent is Muhammad Ahmed, Pakistan.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2023. On June 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 13, 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 (Redacted For Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 14, 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 amendment to the Complaint on June 16, 2023.

The Center verified that the Complaint together with the amendment to 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 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 11, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on July 17, 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

According to the fashion platform Grailed¹, the Complainant, founded in California, is a lifestyle brand originally targeting the bodybuilders niche, known for its hoodies and athletic apparel with wolf branded logos.

The Complainant's official webpage is available at <darcSPORT.com>, a domain name that was registered on August 5, 2014, where the Complainant's products are available. In addition to that, the Complainant is the owner of the United States trademark registration No. 4,833,032 for the word mark DARC SPORT, filed on July 15, 2014, registered on October 13, 2015, in class 25, claiming first use in commerce on December 2014.

The disputed domain name was registered on November 1, 2022, and presently resolves to an online shop reproducing the Complainant's trademark and purportedly offering the Complainant's products at discounted prices.

5. Parties' Contentions

A. Complainant

Under the Complainant's view, the disputed domain name is confusingly similar to its registered trademark, first used in commerce in December 2014, almost eight years before the registration of the disputed domain name.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name, having registered and using the disputed domain name in bad faith in view of the sale of products at the online shop available at the disputed domain name which have impacted the Complainant's business and caused consumers to believe that the items being offered originate from the Complainant, what is not true.

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 aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

¹ <https://www.grailed.com/browse/darc-sport>". Accessed by the Panel on July 19, 2023.

A. Identical or Confusingly Similar

The Complainant has established rights over the DARC SPORT trademark.

The disputed domain name reproduces in its entirety the Complainant's DARC SPORT trademark. The addition of the suffix "shop" does not prevent a finding of confusing similarity under the Policy which, as recognized by past UDRP panels, 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" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7).

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or 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; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is 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.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default, as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prime facie* case against the Respondent who has not been commonly known by the disputed domain name and is neither affiliated with the Complainant.

Also, the lack of evidence as to any trademarks registered by the Respondent corresponding to the disputed domain name, corroborates the indication of an absence of rights or legitimate interests in the disputed domain name.

Moreover, according to the evidence submitted by the Complainant, the use made of the disputed domain name in connection with an online shop reproducing the same look and feel of the Complainant's official website as well as displaying the Complainant's trademark where purported DARC SPORT products are advertised and offered at discounted prices (a factor that could indicate that the products may be counterfeits) and where no disclaimer is provided as to the lack of affiliation between the Respondent's website and the Complainant, in addition to the lack of complete and reliable information about the entity operating the Respondent's website clearly does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other on-line location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv), in view of the reproduction of the Complainant's trademark and purportedly offer of the Complainant's products at the online shop available at the webpage relating to the disputed domain name, which creates a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement thereof.

Moreover, the bad faith of the Respondent is also supported here by the choice to retain a privacy protection service in an attempt to conceal the Respondent's true identity and the lack of reply by the Respondent invoking any rights or legitimate interests.

For the reasons above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy. The third element of the Policy has therefore been met.

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 <darcsportshop.com> be cancelled.

/Wilson Pinheiro Jabur/
Wilson Pinheiro Jabur
Sole Panelist
Date: July 31, 2023