

ADMINISTRATIVE PANEL DECISION

CTM Management S.p.z.o.o v. Drake Stephens Keith
Case No. D2023-2836

1. The Parties

The Complainant is CTM Management S.p.z.o.o, Poland, represented by FPS Partnerschaftsgesellschaft von Rechtsanwälten mbB, Germany.

The Respondent is Drake Stephens Keith, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <creamedeluxe.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 July 3, 2023. On July 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 4, 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 (Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 6, 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 July 6, 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 August 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 23, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on August 28, 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 uses its CREAM DELUXE trademark through licensees in several countries for canisters of nitrous oxide intended for use in professional kitchens, in particular for making whipped cream, cocktails etc.

The Complainant is, *inter alia*, the owner of;

- European Union Trademark CREAM DELUXE (word), registration number 018578234, registered on January 27, 2022; and
- European Union Trademark CREAM DELUXE (device), registration number 018578228, registered on January 29, 2022;
- International trademark, CREAM DELUXE (word), registration number 1700880, registered on November 10, 2022.

The Complainant is also the owner of the domain name <cream-deluxe.com>.

The disputed domain name was registered on March 11, 2022.

The disputed domain name resolves to a website where purported CREAM DELUXE branded goods are offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to the CREAM DELUXE trademark registrations. In this regard, the Complainant affirms that the disputed domain name, which contains the trademark CREAM DELUXE in its entirety with the sole addition of the letter "e" at the end of the word "cream", is confusingly similar to the Complainant's trademark. The Complainant further states that the Respondent has no rights or legitimate interests whatsoever with respect to the disputed domain name.

The Complainant thus concludes that the disputed domain name has been intentionally registered and used to attract Internet users, for commercial gain by creating a likelihood of confusion with the CREAM DELUXE trademark, such confusion encompassing the source, sponsorship, affiliation or endorsement of the website of the Respondent. In support of this claim the Complainant specifically underlined that the Respondent's website is a copy of the Complainant's website, and is offering counterfeit goods that appear identical to the original products, and the Respondent (on its website) has also replicated pictures and trademarks which belong to the Complainant. Finally, the Complainant has affirmed and documented that the Respondent, indicated someone else's postal address on the website connected to the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to obtain a transfer of the disputed domain name, paragraphs 4(a)(i) – (iii) of the Policy require that the Complainant must demonstrate to the Panel 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established rights in the CREAM DELUXE trademark.

The only differences between the CREAM DELUXE trademark and the disputed domain name is the addition of the letter “e” to the end of the word “cream” as well as the generic Top-Level Domain (“gTLD”) “.com”.

The gTLD suffix is generally disregarded under the test for confusing similarity for the purposes of the Policy, and the addition of the letter “e” to the Complainant’s trademark does not prevent a finding of confusing similarity under the first element of the UDRP.

In this sense, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.9: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. The disputed domain name resolves to a website featuring a logo that differs from the Complainant’s device trademark only in colour, in connection with purported sales of the Complainant’s products (being unclear if the products are actually being sold). The website under the disputed domain name uses the Complainant’s own identical thumbnail and has a similar look and feel as the Complainant’s website. The address provided on the website seems to belong to a third party unrelated to the Respondent. The Panel concludes that the website is clearly intended to mislead Internet users into believing that the purported goods are offered by the Complainant. Such use of the disputed domain name cannot confer rights or legitimate interests. In addition, the Respondent does not appear to be commonly known by the disputed domain name or by a similar name. Moreover, the Respondent has not replied to the Complainant’s contentions, claiming any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Based on the evidence put forward by the Complainant, the Panel is of the opinion that the Respondent was aware of the Complainant’s trademark registrations and rights to the CREAM DELUXE mark when it registered the disputed domain name.

The disputed domain name is used for a website where the content displayed shows the Complainant’s device trademark in a different colour, as well as copyrighted images belonging to the Complainant and displays purported CREAM DELUXE branded goods.

Consequently it is clear that the Respondent registered the disputed domain name while being aware of the Complainant’s trademark and activity, and did so with the intention to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of either the Respondent and/or its website, so as to trick those users into doing business with the Respondent.

Therefore, it appears that the Respondent intentionally and fraudulently attempted to impersonate the Complainant by using a website that reproduces its trademark to confuse Internet users. .

This constitutes bad faith registration and use as well as a disruption of the Complainant's business under the Policy.

In addition, the Panel considers that the nature of the disputed domain name, which is almost identical to the Complainant's trademarks, and to the Complainant's <cream-deluxe.com> domain name, reflects the purposeful composition of a domain name to create a direct, misleading inference of the Complainant, and this fact further supports a finding of bad faith.

Further circumstances supporting a finding of bad faith can also be found in the failure to respond to the Complainant's contentions.

Accordingly, the Panel finds, on the basis of the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith.

Therefore, 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, <creamedeluxe.com>, be canceled.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: August 31, 2023