

ADMINISTRATIVE PANEL DECISION

Speciality Drinks Limited v. Ashwini Rabadia
Case No. D2023-2869

1. The Parties

The Complainant is Speciality Drinks Limited, United Kingdom, internally represented.

The Respondent is Ashwini Rabadia, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <globalwhisky-exchange.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2023. On July 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 7, 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 (GDPR masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 13, 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 13, 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 July 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 10, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on August 31, 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 company incorporated in the United Kingdom. The Complainant has traded as “The Whisky Exchange”, which is a specialist online retailer for fine wines and spirits, since 1999. The Complainant makes extensive use of its corresponding main website presence at the URL “www.thewhiskyexchange.com”, for its global online spirits retail business. On September 22, 2021, “Whisky Magazine” reported that the Complainant had been acquired by Pernod Ricard, S.A., which operates in the premium spirits industry. The Complainant was noted by the said “Whisky Magazine” article as being one of the United Kingdom’s biggest drinks retailers, with a catalogue of over 10,000 products, three London shops and an active private sales and online auction presence.

The Complainant is the owner of a variety of registered trademarks in respect of the word mark THE WHISKY EXCHANGE. For example, the Complainant is the owner of European Union Registered Trademark Number 9585605 in respect of the said word mark, registered on May 2, 2011 in Classes 33 and 35. In the jurisdiction where the Respondent is based, the Complainant is the owner of United Kingdom Registered Trademark Number 909585605 in respect of the said word mark, registered on May 2, 2011 in Classes 33 and 35.

In addition to the said word mark, the Complainant is also the owner of a device and word mark which it uses as its logo, featuring the capitalized words THE WHISKY EXCHANGE below a heraldic-style device with two rampant lion supporters clutching ears of barley on either side of an escutcheon in French style with eared top, containing a whisky still above a whisky barrel. For example, the Complainant is the owner of United Kingdom Registered Trademark Number 3676264 for the said device and word mark, registered on December 3, 2021 in Classes 33 and 35.

The disputed domain name was registered on April 5, 2022. The Complainant’s screenshots show that the disputed domain name has been used for a website featuring a logo with the capitalized words “GLOBAL WHISKY EXCHANGE”, together with various decorations, flourishes or scroll ornaments, which confer upon it something more than a passing resemblance to a heraldic device. Other than the said logo, the website associated with the disputed domain name appears to be a close replica to that of a legitimate company dealing in whisky cask ownership which has no affiliation to the Respondent. MX and SPF resource records have been added to the disputed domain name’s DNS configuration. The Respondent’s website has since been suspended, although the reason for such suspension is not known to the Panel.

Little is known of the Respondent itself, which has not participated in the administrative proceeding, other than that it appears to be a private individual, and that it provided the Registrar with an address featuring two cities in the United Kingdom, namely “London, London, Manchester, London, United Kingdom”, together with a Manchester, United Kingdom postcode. The Panel is aware from its own knowledge of the United Kingdom that this address cannot be regarded as complete or correct.

The website associated with the disputed domain name provides the details of a company named Global Whisky Trade (London) Limited with which the Respondent may be connected. This company was previously named Global Whisky Exchange Limited. The Complainant made a formal complaint through The Company Names Tribunal of the United Kingdom regarding the latter company name which led to a formal decision on October 24, 2022. The decision ordered the said company name to be changed and awarded costs in the Complainant’s favor.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Complainant contends that its mark THE WHISKY EXCHANGE

is distinctive and that the mimicking of the Complainant's <thewhiskyexchange.com> domain name by the Respondent for an online whisky platform could not be pure coincidence. It adds that the MX and SPF resource records in the disputed domain name's DNS configuration show that it is capable of receiving email, and constitute an indication for possible phishing attempts and passing-off by the Respondent.

B. Respondent

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

6. Discussion and Findings

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 mark is recognizable within the disputed domain name, and that the omission of the definite article "the" in said mark is not of any significance. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here the word "global" and a dash or hyphen, may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 such as those enumerated in the Policy or otherwise. Notably, the apparent commercial use of the disputed domain name for a website (now suspended) which was substantially a clone of another, legitimate, business (under a brand that only shares in common with the Complainant's trademark the term "whisky") does not support the notion that the Respondent may be making a *bona fide* offering of goods or services thereby. The decision of The Company Names Tribunal of the United Kingdom and the absence of suitable details relating to the

registrant in the relevant Whois record indicate that the Respondent is unlikely to be in a position to argue that it has been commonly known by the disputed domain name.

The cloning of a third party website together with the configuration of MX and SPF resource records in connection with the disputed domain name may suggest that the disputed domain name was intended for illegal activity along the lines contended by the Complainant. This is a serious allegation that calls for an answer from the Respondent although none has been forthcoming. The Panel cannot think of any reason why the Respondent would have chosen a disputed domain name reproducing the Complainant's trademark in its entirety (merely adding to it the term "global" and a hyphen) while using it to resolve to a website cloning the one of a legitimate third party, if it was not for some spurious purpose. 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.

In the present case, the Panel notes that the Respondent has used a domain name that is confusingly similar to the Complainant's mark for an apparently cloned commercial whisky cask investment website. The Complainant's reputation in the field of whisky retail is widespread and its trademarks are of a longstanding nature. The Respondent is based in the United Kingdom, as is the Complainant. The Complainant is prominent in the whisky trade and the Respondent is ostensibly involved in that trade. The possibility of the disputed domain name having been registered independently, without knowledge of the Complainant's rights or intent to target these, is excluded in the Panel's opinion.

The Respondent has adopted a logo for the website associated with the disputed domain name that features similar words and scroll embellishments which might be considered heraldic in appearance. This renders the logo similar to the words and heraldic features of the Complainant's logo, and it is likely to suggest to users that there is a real connection between the disputed domain name and the Complainant or its rights when there is none. It is reasonable to infer that the similarity is deliberate and that the Respondent's logo was designed to resemble that of the Complainant in order to cause confusion in the minds of the relevant public, especially when seeing it combined with the trademark WHISKY EXCHANGE, even if in the Respondent's case is preceded by the term "Global".

The cloning of a third party whisky-focused website (with the addition of the Respondent's logo) for use in connection with the disputed domain name, coupled with the configuration of the disputed domain name for email purposes, suggests that the Respondent does not intend to provide a *bona fide* offering of goods or services thereunder but may rather have been planning to use the disputed domain name in connection with some form of illegal activity. 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.

Taking all of the facts and circumstances of the case into consideration, the Panel determines that by using the disputed domain name, 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 mark as to source, sponsorship and/or affiliation. This constitutes registration and use in bad faith in terms of paragraph 4(b)(iv) of the Policy.

Accordingly, having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <globalwhisky-exchange.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: September 14, 2023