

ADMINISTRATIVE PANEL DECISION

Kiva Brands, Inc. v. tedd cor
Case No. D2023-3141

1. The Parties

The Complainant is Kiva Brands, Inc., United States of America, represented by Evoke Law, PC, United States of America.

The Respondent is tedd cor, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <caminogummiesstore.com> is registered with Gransy, s.r.o. d/b/a subreg.cz (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 20, 2023. On July 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 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 July 26, 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 July 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 18, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on September 1, 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 California licensed company operating a cannabis manufacturing and distribution business pursuant to California's Medicinal and Adult-Use Cannabis Regulation and Safety Act.

Since 2018, the Complainant has manufactured and sold cannabis infused gummies under the CAMINO trademark in California. In conjunction with local licensed manufacturers, the gummies under the trademark CAMINO are also sold in New York, Nevada, Arizona, Oklahoma, Missouri, Illinois, Michigan, Ohio, Massachusetts, Hawaii, and Maryland, as well as internationally in Canada.

The Complainant states that it has been using the CAMINO trademark since 2018.

The Complainant owns several trademark registrations for the word CAMINO including:

Jurisdiction	Registration No.	Registration Date
- Australia	2154381	November 8, 2021
- Mexico	2522222	March 16, 2023

The Complainant also operates a website located at "www.kivaconfections.com/brand/camino".

The disputed domain name was registered on March 9, 2023. At the time of filing the Complaint, it resolves to a website containing the trademark of the Complainant and an online store for the Complainant goods. The disputed domain name is currently inactive.

In addition the Complainant states the following:

- On July 13, 2023, the Complainant received a complaint from the relative of a person who had purchased products on the disputed domain name believing it was a website associated with the Complainant. The email explains that the customer had not received any product and the representatives from <caminogummiesstore.com> were seeking additional monies from the customer.
- The chief legal officer contacted the disputed domain name via the chat of the website and was able to verify that a person operating such domain name stated that they were the Complainant.

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:

- the disputed domain name is confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy 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

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 confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms like "gummies" and "store" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does 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.

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.

Furthermore, the composition of the disputed domain name, comprising the Complainant's trademarks in their entirety and the addition of the terms "gummies" and "store" together with the content of the website at the disputed domain name carries a risk of implied affiliation with the Complainant.

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's use of the disputed domain name has caused at least one known customer to be diverted from purchasing the Complainant's legitimate products and that customer never received a product.
- The Complainant stated that the Respondent is not licensed or authorized by the state of California or any other state to operate a commercial cannabis business. The Respondent has not denied this assertion.
- An affidavit from the Chief Legal Officer of the Complainant stated that the Respondent is representing himself as the Complainant.
- As mentioned above, the Complainant has been using the CAMINO brand since 2018, and it is known as a leading cannabis product.
- The disputed domain name is currently not in use.

Considering the above, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website 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. In the present case, as explained above the disputed domain name has been used to impersonate the Complainant.

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, <caminogummiesstore.com>, be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: September 14, 2023