

ADMINISTRATIVE PANEL DECISION

Kenvue Inc. v. Tamer yanovic

Case No. D2023-3576

1. The Parties

Complainant is Kenvue Inc., United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, P.C., United States.

Respondent is Tamer yanovic, United States.

2. The Domain Name and Registrar

The disputed domain name <bandaidgear.com> (the “Disputed Domain Name”) is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 24, 2023. On August 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 28, 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) and contact information in the Complaint. The Center sent an email communication to Complainant on September 1, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 6, 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 Respondent of the Complaint, and the proceedings commenced on September 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 28, 2023.

The Center appointed Richard W. Page as the sole panelist in this matter on October 9, 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

Complainant is the world's largest pure-play consumer health company by revenue. Built on more than a century of heritage and propelled forward by science, Complainant owns iconic brands - including Aveeno, Johnson's, Listerine, Neutrogena, Tylenol, and Zyrtec - which are recommended by health care professional and can be trusted by consumers who use the products to improve their daily lives.

Complainant is the owner of the BAND-AID Mark in the United States and in jurisdictions around the world. Complainant markets the BAND-AID brand lines of bandages and other first-aid products. Complainant's BAND-AID brand product line has been available for more than 100 years and has been used by millions of people since its introduction. In addition, Complainant owns longstanding trademark registrations for its BAND-AID Mark, including without limitation, United States Registration Nos. 0194123 (registered on January 13, 1925); 2471737 (registered on July 24, 2001); and 4182885 (registered on July 31, 2012). Complainant also owns multiple trademark registrations for its BAND-AID Mark around the world, including Canada.

Complainant, either on its own or through affiliated companies, owns and operates the "www.band-aid.com" website which includes product information for consumers around the world, though information on BAND-AID products can also be found at a Complainant's corporate website "www.kenvue.com".

The Disputed Domain Name registration was created on April 11, 2023.

5. Parties' Contentions

A. Complainant

Complainant contends that the BAND-AID brand was named one of the most trusted brand in the United States in 2022 and 2023. Through extensive use and advertising over many years, the BAND-AID Mark has become a famous trademark that is uniquely identified with Complainant's products and represents enormous and valuable goodwill.

Complainant further contends that through Complainant's use and registration of the BAND-AID Mark, which has been in use around the world since 1920, the BAND-AID Mark has come to be exclusively associated with Complainant and its first-aid products.

Complainant further contends that the Disputed Domain Name is confusingly similar to the BAND-AID Mark, pursuant to paragraph 4(a)(i) of the Policy,.

Complainant further contends that the Disputed Domain Name is confusingly similar to the BAND-AID Mark because it incorporates the entirety of the BAND-AID Mark, merely adding the term "gear" and the generic Top-Level Domain ("gTLD") ".com". Complainant further contends that deleting the hyphen between terms "band" and "aid" is not sufficient to refute the similarity between the Disputed Domain Name and the BAND-AID Mark.

Complainant alleges that Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Complainant further alleges that Respondent is not commonly known by the Disputed Domain Name.

Complainant further alleges that at no time did it ever authorize or permit Respondent's registration of the Disputed Domain Name incorporating the BAND-AID Mark, and that there is no relationship between Complainant and Respondent that would give rise to any license, permission, or authorization for Respondent to use or register the Disputed Domain Name.

Complainant further alleges that the Disputed Domain Name is currently being used in connection with a website called "Woodworking." While the website is primarily for woodworking and sells products such as kitchen appliances, clocks, and floor mats, it also offers adhesive bandages. Though there are first-aid products offered at Respondent's website, those bandages are from other competing manufacturers, including Curad, School Health, and PhysiciansCare. Though Respondent's website does include some listings for BAND-AID brand bandages, it is unclear from the website associated with the Disputed Domain Name whether the "BAND-AID" products being offered for sale are genuine BAND-AID brand products. The website to which the Disputed Domain Name resolved lacks a disclaimer of any sort.

Complainant further alleges that Complainant never sold its BAND-AID brand products to Respondent directly nor has Respondent ever been designated an authorized retailer or promotional partner for genuine BAND-AID brand products. Furthermore, Respondent has never been authorized to use Complainant's BAND-AID Mark for any purpose. The use of the BAND-AID Mark at the infringing site and the website to which it redirects cannot be considered a legitimate noncommercial or fair use of the BAND-AID Mark.

Complaint further alleges that Respondent is not making a *bona fide* use of the Disputed Domain Name, but instead registered and is using the Disputed Domain Name to mislead Internet users to believe that the Disputed Domain Name and its owner are somehow related to, endorse by, or otherwise affiliated with Complainant, and that Respondent has been authorized to promote Complainant's products (or generic or counterfeit versions thereof) for sale.

Complainant asserts that Respondent has registered and used the Disputed Domain Name in bad faith, pursuant to paragraph 4(a)(iii) of the Policy.

Complainant further asserts that, since the BAND-AID Mark is so well known, the only reason that Respondent could have for registering and using the Disputed Domain Name is that Respondent knew of the BAND-AID Mark and wanted to trade on Complainant's renown to lure consumers to Respondent's website to sell BAND-AID brand products without authorization.

Complainant further asserts that the website to which the Disputed Domain Name resolves purports to sell genuine BAND-AID brand products, but also sells similar bandages from Complainant's direct competitors, as well as a number of wholly unrelated products. Respondent merely set up the website to lure traffic and buyers to the website. Respondent has acted in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the BAND-AID Mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and,
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of a trademark is *prima facie* evidence of Complainant having enforceable rights in the BAND-AID Mark.

Complainant contends it owns longstanding trademark registrations for its BAND-AID Mark, as mentioned in section 4 above.

Therefore, the Panel finds that Complainant has rights in the BAND-AID Mark for purposes of this proceeding.

Section 1.7 of the [WIPO Overview 3.0](#) says that inclusion of the entire trademark in a domain name will be considered confusingly similar. Section 1.8 of the [WIPO Overview 3.0](#) instructs that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. Section 1.11.1 of the [WIPO Overview 3.0](#) instructs that gTLDs such as “.com” may be disregarded for purposes of assessing confusing similarity.

The Panel finds that the Disputed Domain Name is confusingly similar to the BAND-AID Mark because it incorporates the entirety of the BAND-AID Mark, merely adding the term “gear”, and the gTLD “.com”. The Panel further finds that deleting the hyphen between terms “band” and “and” does not prevent a finding of confusing similarity between the Disputed Domain Name and the BAND-AID Mark.

The Panel finds that Complainant has shown the necessary elements of confusing similarity, pursuant to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant alleges that Respondent has no rights or legitimate interest in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of demonstrating he has rights or legitimate interests in the Disputed Domain Name. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or legitimate interests in the Disputed Domain Name:

- (i) before any notice to you [Respondent] of the dispute, your 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) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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 BAND-AID Mark.

Complainant further alleges that at no time did it ever authorize or permit Respondent's registration of the Disputed Domain Name incorporating the BAND-AID Mark, and that there is no relationship between Complainant and Respondent that would give rise to any license, permission or authorization for Respondent to use or register the Disputed Domain Name.

Complainant further alleges that Respondent is not commonly known by the Disputed Domain Name.

Complainant further alleges that Complainant never sold its BAND-AID brand products to Respondent directly nor has Respondent ever been designated an authorized retailer or promotional partner for genuine BAND-AID brand products. Furthermore, Respondent has never been authorized to use Complainant's BAND-AID Mark for any purpose. The use of the BAND-AID Mark at the infringing site and the website to which it redirects cannot be considered a legitimate noncommercial or fair use of the BAND-AID Mark.

Complaint further alleges that Respondent is not making a *bona fide* use of the Disputed Domain Name, but instead registered and is using the Disputed Domain Name to mislead Internet users to believe that the Disputed Domain Name and its owner are somehow related to, endorse by, or otherwise affiliated with Complainant, and that Respondent has been authorized to promote Complainant's products (or generic or counterfeit versions thereof) for sale.

The Panel finds that Complainant has set forth a *prima facie* case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Respondent has not controverted Complainant's allegations.

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

C. Registered and Used in Bad Faith

Complainant asserts that Respondent registered and is using the Disputed Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

- (i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the BAND-AID Mark or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or
- (ii) you [Respondent] have registered the Disputed Domain Name in order to prevent Complainant from reflecting the BAND-AID Mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the BAND-AID Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on your website or location.

Complainant further asserts that, since the BAND-AID Mark is so well known, the only reason that Respondent could have for registering and using the Disputed Domain Name is that Respondent knew of the BAND-AID Mark and wanted to trade on Complainant's renown to lure consumer to Respondent's website to sell BAND-AID brand products without authorization.

Complainant further asserts that the website to which the Disputed Domain Name resolves purports to sell bandages from Complainant's direct competitors, as well as a number of wholly unrelated products. Respondent merely set up the website to lure traffic and buyers to the website for commercial gain. Respondent has acted in bad faith.

Respondent has failed to contest these assertions.

The Panel finds that the evidence is sufficient to support a finding that paragraph 4b(iv) of the Policy applies here, and that Complainant has shown the necessary elements of 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 <bandaidgear.com> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: October 23, 2023