

ADMINISTRATIVE PANEL DECISION

Moose Labs LLC v. Daniil Khidekel, DomainSite, Inc., Name.com, Inc.
Case No. D2023-4492

1. The Parties

Complainant is Moose Labs LLC, United States of America (“United States”), represented by Momkus LLC, United States.

Respondent is Daniil Khidekel, DomainSite, Inc., Name.com, Inc., United States.

2. The Domain Name and Registrar

The disputed domain name <mooselabs.com> (the “Domain Name”) is registered with DomainSite, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2023. On October 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 31, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on November 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2023. Respondent sent an email to the Center on November 30, 2023, requesting an extension of the Response due date. The Response due date was extended to December 4, 2023. Respondent did not submit any formal response.

The Center appointed Robert A. Badgley as the sole panelist in this matter on December 12, 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 describes itself as “a product design and development company that specializes in sanitary cannabis smoking accessories.” Complainant operates a commercial website at the domain name <mooselabs.us>.

Complainant holds two registered trademarks with the United States Patent and Trademark Office (“USPTO”), both registered on August 17, 2021 in connection with “Cigarette rolling papers; Smoker’s articles, namely, filter tubes; Smokers’ mouthpieces for cigarettes, pre-roll cigarettes, pipes, waterpipes, and electronic cigarettes; Smokers’ rolling trays,” and both marks with a July 8, 2017 date of first use in commerce. One mark, USPTO Reg. No. 6,454,053, is for the word mark MOOSE LABS, and the other mark, USPTO Reg. No. 6,454,065, is for the mark MOOSE LABS and design.

The Domain Name was registered on January 11, 2009. There has been no allegation made, or evidence presented, that someone other than Respondent owned the Domain Name before Respondent acquired it. As such, for purposes of this proceeding, the Panel will presume that Respondent is the original registrant of the Domain Name and has owned the Domain Name since 2009.

According to a screenshot annexed to the Complaint, the Domain Name resolves to a website featuring hyperlinks to sites apparently associated with smoking paraphernalia. These links include: “Silicone mouthpiece”, “Mouthpiece Filters”, and “Glass Bong Mouthpiece”.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent requested an extension of the Response due date but did not reply substantively to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the mark MOOSE LABS through registration demonstrated in the record. The Panel also finds the Domain Name to be identical to that mark.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the 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 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 Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel need not decide this element, given its conclusion below on the “bad faith” element.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

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

The Panel concludes that Complainant has failed to prove that Respondent both registered and used the Domain Name in bad faith. The undisputed record here shows that Complainant held a registered trademark for MOOSE LABS since August 17, 2021, and has used that mark in commerce since July 8, 2017. The record also shows that Respondent is currently using the Domain Name for a website with hyperlinks to websites that offer goods similar to those offered by Complainant. If the foregoing were all that Complainant were required to prove, Complainant might have prevailed here. (Respondent’s failure to respond at all to the allegations make such a conclusion uncertain.)

Complainant’s problem here is that it has failed to provide any evidence that Respondent had Complainant’s MOOSE LABS mark in mind when Respondent first acquired the Domain Name. As noted above, the Domain Name was first registered on January 11, 2009, before Complainant had any registered trademark rights (or claimed use in commerce per its registrations), and there is no evidence in the record to indicate that the Domain Name changed hands over time such that Respondent acquired it after Complainant began using the MOOSE LABS mark. As such, the record is devoid of evidence of bad faith registration by Respondent, and the Complaint must fail. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 3.8.1.

Complainant has not established Policy paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, the Complaint is denied, but without prejudice to Complainant's right to refile a complaint and initiate a new UDRP proceeding in the event Complainant develops new information not reasonably available at the time of the filing of the Complaint in this proceeding showing that Respondent acquired the Domain Name after Complainant had established trademark rights in MOOSE LABS.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: December 26, 2023