

ADMINISTRATIVE PANEL DECISION

Yamaha Corporation v. Ahmad Tbyb
Case No. D2023-4551

1. The Parties

The Complainant is Yamaha Corporation, Japan, internally represented.

The Respondent is Ahmad Tbyb, United Arab Emirates.

2. The Domain Names and Registrar

The disputed domain names <id-yamaha.com> and <yamahaelectricpiano.com> (the “disputed domain names”) are registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 2, 2023. On November 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 3, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (1API GmbH) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 9, 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 November 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 November 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 14, 2023.

The Center appointed Theda König Horowicz as the sole panelist in this matter on December 21, 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 registered in Japan which manufactures and sells musical instruments.

The Complainant owns registrations comprising the trademark YAMAHA including the European Union Trademark Registration No. 000191387, in international classes 9, 15 and 28, with a registration date of October 15, 1998.

The disputed domain name <id-yamaha.com> was registered on February 16, 2022, and the disputed domain name <yamahaelectricpiano.com> was registered on May 22, 2022. The disputed domain name <id-yamaha.com> redirects to the disputed domain name <yamahaelectricpiano.com>, which is used for a website promoting among others YAMAHA musical instruments. More specifically, the website uses the trademark YAMAHA on the top of its homepage.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a cancellation of the disputed domain names.

Notably, the Complainant contends to have trademark rights over YAMAHA and is of the opinion that the disputed domain names are identical or confusingly similar to its mark.

The Complainant also alleges that it has no relationship with the Respondent who is not known under the name YAMAHA and who has no rights over the trademark YAMAHA. Additionally, the Respondent was not authorized by the Complainant to use its YAMAHA trademark. Under the circumstances, the Complainant is of the opinion that the Respondent does not have rights or legitimate interests over the disputed domain names.

The Complainant contends that its YAMAHA trademark is well known worldwide and the Respondent could have found through a simple Internet search that it belongs to the Complainant. The disputed domain names are linked to a website promoting electric YAMAHA music instruments thus misleading the Internet users into believing that the said website is operated by the Complainant.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, in order to prevail, a complainant must prove the following three elements for obtaining the cancellation or transfer of a domain name:

(i) that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) that the respondent has no rights or legitimate interests in the domain name; and

(iii) that the 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 the trademark YAMAHA for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the entirety of the mark YAMAHA is reproduced within the disputed domain names. Although the addition of other terms in the disputed domain names, that is "id-" in "id-yamaha" and "electricpiano" in "yamahaelectricpiano", the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

Further, the Panel finds that the nature of the disputed domain names carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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 Complainant's YAMAHA trademark is known for musical instruments, in particular for pianos which are manufactured and commercialized worldwide by the Complainant. Considering the notoriety of the Complainant's trademark YAMAHA, the Respondent obviously had knowledge of it when registering the disputed domain names, particularly noting the use of the disputed domain names, and one of the disputed domain names contains the term "electric piano" thus referring to goods which are manufactured and commercialized by the Complainant.

Furthermore, the Respondent has been using the disputed domain names for the same website which prominently displays the YAMAHA trademark on the top of its homepage, promoting among others YAMAHA musical instruments, including electric pianos, which is a bad faith use of the disputed domain names.

The silence of the Respondent in these proceedings is an additional factor of bad faith registration and use.

Based on the available record, the Panel finds that the Complainant has established the third element 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 names <id-yamaha.com> and <yamahaelectricpiano.com> be cancelled.

/Theda König Horowicz/

Theda König Horowicz

Sole Panelist

Date: January 15, 2024