

ADMINISTRATIVE PANEL DECISION

Capel Grandes Tailles v. Host Master, Transure Enterprise Ltd Case No. D2023-4803

1. The Parties

The Complainant is Capel Grandes Tailles, France, represented by Cabinet Herrburger, France.

The Respondent is Host Master, Transure Enterprise Ltd, United States of America.

2. The Domain Name and Registrar

The disputed domain name <capel-store.com> is registered with Above.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 14, 2023. On November 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 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 (Technius Ltd) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 24, 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 24, 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 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 26, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on January 4, 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 in this proceeding is Capel Grande Tailles, a French simplified joint stock company.

The Complainant is, inter alia, the owner of;

-European Union Trade Mark CAPEL PARIS (device), registration number 013823281, registered on September 23, 2015;

-European Union Trade Mark CAPEL (word), registration number 018508074, filed on July 6, 2021 and registered on February 19, 2022. This trademark claims earlier seniority in Benelux, (1991), France (1983) and Germany (1991).

-European Union Trade Mark CAPELSTORE (word), registration number 018507734, filed on July 5, 2021 and registered on April 26, 2022.

The Complainant uses the CAPEL trademark in Europe, in particular through the website “www.capelstore.fr” which has been used to sell men’s clothing since the date of registration of the domain name <capelstore.fr>, i.e., March 18, 2011.

The disputed domain name was registered on September 23, 2021.

The disputed domain name is currently inactive. From the submissions provided by the Complainant it appears that previously (at least on October 21, 2023), the disputed domain name was used to redirect Internet users to the page “www.fr.stripchat.com”, where a website with pornographic content was hosted.

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 the Complainant’s trademarks, that the Respondent has no legitimate interests in the disputed domain name, and particularly that the Respondent registered and used the disputed domain name to redirect Internet users to a website displaying pornographic content, and that this is clear inference of bad faith use and registration of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

(i) the disputed domain name is identical or confusingly similar to a trademark 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 mark is recognizable 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.

Although the addition of other terms, here "-" (a hyphen) and the term "store", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

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 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.

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 intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The disputed domain name reproduces, without any authorization or approval, the Complainant's registered CAPEL and CAPELSTORE trademarks. The disputed domain name was registered many years after the Complainant's CAPEL trademark was registered. In addition, the disputed domain name is almost identical to the Complainant's domain name <capelstore.fr>, registered and used by the Complainant since 2011.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the CAPEL and CAPELSTORE trademarks, and chose the dispute domain name intentionally to misleadingly attract Internet users to its own website, "www.stripchat.com", for commercial gain, by creating a likelihood of confusion with the Complainant's trademark, and this amounts to bad faith use and registration of the disputed domain name.

In fact, there is no other apparent explanation as to the reason why the Respondent has chosen the disputed domain name, which is unrelated to its name, business, and activity, to direct Internet users to a pornographic website with a completely different name. This conduct is known as "pornosquatting", namely the practice where confusion with a third party's trademark is used to divert internet users to an adult-content website for commercial purposes. In this sense, see *LEGO Juris A/S v. Lu Zhi Tao*, WIPO Case No. [D2023-0177](#) where the Panel's finding was: "the Respondent has intentionally registered the disputed domain names in order to generate traffic to its own website with adult content. Such conduct is known as "pornosquatting", the practice whereby confusion with a famous trademark is used to divert Internet users to an adult content website for commercial purposes"; and *Prada S.A. v. Roberto Baggio*, WIPO Case No. [D2009-1187](#) where it was found that: "'Porno-squatting' constitutes a paradigm case of registration in bad faith as the decisions of many panels have established, not least in relation to the PRADA trade mark in *Prada S.A. v. Ms. Loredana Salvatori*, WIPO Case No. [D2007-0064](#)".

The Respondent's lack of any rights or legitimate interests in the disputed domain name, and the use of the disputed domain name incorporating the Complainant's trademark to misleadingly direct Internet users to a website with explicit adult content for commercial gain, is in the view of the Panel sufficient evidence of bad faith registration and use under paragraph 4(b)(iv) of the Policy.

The bad faith registration and use of the disputed domain name are also affirmed by the fact that the Respondent did not respond, nor has it denied the assertions of bad faith made by the Complainant in this proceeding.

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 name <capel-store.com> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: January 18, 2024