

ADMINISTRATIVE PANEL DECISION

Hede Fashion Outlet AB v. sweden reos, My Store
Case No. D2023-4858

1. The Parties

The Complainant is Hede Fashion Outlet AB, Sweden, represented by de Merkplaats B.V., Netherlands (Kingdom of the).

The Respondent is sweden reos, My Store, Netherlands (Kingdom of the).

2. The Domain Name and Registrar

The disputed domain name <fashionoutlethede.com> (the “Disputed Domain Name”) is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 22, 2023. On November 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 23, 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 (Contact Privacy Inc. Customer 0169173002) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 29, 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 December 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 26, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on January 12, 2024. 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, Hede Fashion Outlet AB, is a Swedish company that appears to operate a shopping center.

The Complainant is the owner of the Swedish figurative mark depicted below, registered under No. 541340 on August 25, 2017 in classes 16, 35, 39, and 42;



The Complainant claims to be the owner of the domain names <hedefashionoutlet.com> and <hedefashionoutlet.se>.

The Disputed Domain Name was registered on November 2, 2023. According to the Complainant's undated evidence, the Disputed Domain Name appeared to resolve to a website displaying the Complainant's figurative mark. The Panel observes that the Disputed Domain Name currently resolves to an error page mentioning "This store is unavailable".

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 a trademark in which it claims to have rights. According to the Complainant, relevant consumers could associate the Disputed Domain Name with the Complainant's trademark, especially since the Respondent used the Complainant's logo and offered clothing, like the Complainant.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. To the best of the Complainant's knowledge, the Respondent has not been commonly known by the Disputed Domain Name, has no trademark rights and is not making a legitimate use of the Disputed Domain Name. The Complainant claims that the Respondent was misleading consumers and was trying to profit from its reputation.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, by using the Disputed Domain Name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's 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, especially since the Respondent was using the Complainant's logo name.

B. Respondent

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

6. Discussion and Findings

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 textual components of 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](#)"), sections 1.7 and 1.10.

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 observes that the Disputed Domain Name incorporates in a different order all the textual elements of the Complainant's HEDE FASHION OUTLET figurative trademark. In such cases, the domain name will normally be considered confusingly similar to the incorporated mark for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

It is well established that generic Top-Level-Domains ("gTLDs"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

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.

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "sweden reos, My Store". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name entirely corresponds to the textual components of the Complainant's trademark, without any addition. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), sections 2.5.2 and 2.5.3.

According to the Complainant's undated evidence, the Disputed Domain Name referred to a website appearing to display the Complainant's HEDE FASHION OUTLET figurative mark and a picture of a shopping center, which relates to the Complainant's activities. In the Panel's view, this does not amount to a legitimate noncommercial or fair use of the Disputed Domain Name.

The Panel observes that the Disputed Domain Name currently resolves to an error page. In the Panel's view, this does not amount to any legitimate noncommercial or fair use or use in connection with a *bona fide* offering of goods and services.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

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.

According to the Complainant's uncontested evidence, the Disputed Domain Name appeared to resolve to a website displaying the Complainant's figurative mark and offering products and services similar to or even competing with products and services linked to the Complainant's trademark. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark (see *Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan*, WIPO Case No. [D2014-2227](#)).

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.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name as:

- the Disputed Domain Name corresponds to all textual components of the Complainant's mark, without any addition;
- the Complainant's figurative mark predates the registration of the Disputed Domain Name by more than 6 years;
- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use and;
- the website linked to the Disputed Domain Name appeared to display the Complainant's figurative mark.

Furthermore, given the totality of the circumstances discussed above, the current status of the Disputed Domain Name, referring to an inactive web page, does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

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 <fashionoutlethede.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: January 26, 2024