

ADMINISTRATIVE PANEL DECISION

AAMP of Florida, Inc. v. Austin Valcoure
Case No. D2023-5123

1. The Parties

The Complainant is AAMP of Florida, Inc., United States of America (“United States”), represented by Fredrikson & Byron, P.A., United States.

The Respondent is Austin Valcoure, United States.

2. The Domain Name and Registrar

The disputed domain name <stingeroffroad.shop> (the “Disputed Domain Name”) is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 7, 2023. On December 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 9, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 14, 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 December 19, 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 the Respondent of the Complaint, and the proceedings commenced on January 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 30, 2024.

The Center appointed Lynda M. Braun as the sole panelist in this matter on February 6, 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

Founded in 1987, the Complainant is a global supplier of car audio supplies incorporated in the State of Florida, United States. The Complainant launched its STINGER brand of cables, interconnects, and car audio electronics in 1990, selling its products on the Internet, on its own website and on third-party websites, as well as in its brick-and-mortar car audio specialty stores. The Complainant sold approximately USD 26 million of its STINGER brand products in 2022 and spent approximately USD 1.4 million to advertise the brand.

The Complainant owns the following trademarks in the United States, registered with the United States Patent and Trademark Office (“USPTO”): STINGER (stylized), United States Trademark Registration No. 1,673,306, registered on January 28, 1992, in international class 9; STINGER (stylized), United States Trademark Registration No. 2,096,339, registered on September 16, 1997, in international class 7; STINGER, United States Trademark Registration No. 2,127,490, registered on January 6, 1998, in international class 27; STINGER, United States Trademark Registration No. 2,436,057, registered on March 20, 2001, in international class 9; STINGER, United States Trademark Registration No. 3,151,283, registered on October 3, 2006, in international class 9; STINGER, United States Trademark Registration No. 6,687,353, registered on March 29, 2022, in international class 9; and STINGER OFF-ROAD, United States Trademark Registration No. 6,770,429, registered on June 28, 2022, in international class 35 (hereinafter collectively referred to as the “STINGER Mark”).

The Complainant owns the domain name <stingeroffroad.com> that resolves to its official online website at “www.stingeroffroad.com” and on which the Complainant sells its products bearing the STINGER Mark.

The Disputed Domain Name was registered on August 7, 2023, years after the Complainant first used the STINGER Mark. As shown in an annex to the Complaint, the Disputed Domain Name initially resolved to a website at “www.stingeroffroad.shop” on which the Respondent attempted to impersonate the Complainant and the Complainant’s online website, purporting to sell STINGER-branded products while displaying images of such Stinger products. As of the writing of this Decision, however, the Disputed Domain Name resolves to an inactive error landing page which states, “This site can’t be reached. stingeroffroad.shop’s server IP address could not be found.”

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 trademark because the Disputed Domain Name contains the STINGER Mark in its entirety, followed by the additional terms “off road”, and then followed by the generic Top-Level Domain (“gTLD”) “.shop”, and thus does not prevent a finding of confusing similarity;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Complainant has not authorized the Respondent to register a domain name containing the STINGER Mark, the Respondent was not making a bona fide offering of goods or services through the Disputed Domain Name, and the Respondent has never been commonly known by the STINGER Mark or any similar name; and

- the Disputed Domain Name was registered and is being used in bad faith because, among other things, the Disputed Domain Name initially resolved to a website that impersonated the Complainant's official online website, displaying images of the Complainant's authentic products.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the STINGER Mark.

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. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

It is uncontroverted that the Complainant has established rights in the STINGER Mark based on its years of use as well as its registered trademarks for the STINGER Mark before the USPTO. The consensus view of panels is that "registration of a mark is prima facie evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive". See *CWI, Inc. v. Domain Administrator c/o Dynadot*, WIPO Case No. [D2015-1734](#). The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the STINGER Mark.

The Disputed Domain Name consists of the STINGER Mark in its entirety followed by the terms "off road", and then followed by the gTLD ".shop". It is well established that a domain name that wholly incorporates a trademark may be deemed confusingly similar to that trademark for purposes of the Policy despite the addition of other terms. As stated in section 1.8 of [WIPO Overview 3.0](#), "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". Thus, the mere addition of the terms "off road" to the Complainant's STINGER Mark in the Disputed Domain Name does not prevent a finding of confusing similarity. See *e.g.*, *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and *Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. [D2008-0923](#). In addition, the Complainant also owns a trademark for STINGER OFF-ROAD, the only difference between that trademark and the Disputed Domain Name being the use of a hyphen between the terms "off" and "road".

Finally, the addition of a gTLD such as ".shop" in a domain name is a technical requirement. As such, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name

is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's STINGER Mark.

Based on the available record, the Panel finds that 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 that 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 that 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 Complainant has not authorized, licensed, or otherwise permitted the Respondent to use the STINGER Mark nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c). The Disputed Domain Name initially directed users to a website mimicking the Complainant's official website with product images of the Complainant's products, and such use likely confused consumers as to the source of the goods being offered. Such use would not support a claim to rights or legitimate interests.

Further, the Panel concludes that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. Rather, the Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead by deceiving the Complainant's customers into incorrectly believing that they arrived at the Complainant's website. Such use cannot conceivably constitute a bona fide offering of a product within the meaning of paragraph 4(c)(i) of the Policy or a noncommercial or fair use of the Disputed Domain Name.

In sum, 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 that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith registration and use of the Disputed Domain Name pursuant to paragraph 4(a)(iii) of the Policy.

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. 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 use of a domain name to intentionally attempt to attract Internet users to a respondent's website or online location by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of the registrant's website or online location for commercial gain demonstrates registration and use in bad faith. Here, the Respondent's registration and use of the Disputed Domain Name indicate that such registration and use had been done for the specific purpose of trading upon and targeting the name and reputation of the Complainant. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Moreover, the Panel concludes that the Respondent's registration of the Disputed Domain Name was an attempt to disrupt the Complainant's business by diverting Internet users who were searching for the Complainant's products from its official website to the Respondent's website, as well as to prevent the Complainant from registering the Disputed Domain Name. See *Banco Bradesco S.A. v. Fernando Camacho Bohm*, WIPO Case No. [D2010-1552](#). The Respondent's use of the Disputed Domain Name was also highly likely to confuse Internet users into incorrectly believing that the Respondent was authorized by or affiliated with the Complainant, and to disrupt the Complainant's business by using the Disputed Domain Name's resolving website to promote and sell the Complainant's products from the Respondent, while appearing to be sold by the Complainant.

Panels have held that the use of a domain name for illegal activity, as was present here, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel thus finds that the Respondent's registration and use of the Disputed Domain Name constitutes bad faith registration and use under the Policy due to the Respondent's use of a website to impersonate the Complainant, and sell its products to unwitting customers who were searching for them, and would pay for them via the Respondent's website.

The Panel also finds that the Respondent knew that the Complainant had rights in the STINGER Mark when registering the Disputed Domain Name, emblematic of bad faith registration and use. It strains credulity to believe that the Respondent did not know of the Complainant or the STINGER Mark when registering the Disputed Domain Name. See *Myer Stores Limited v. Mr. David John Singh*, WIPO Case No. [D2001-0763](#) ("a finding of bad faith may be made where the respondent 'knew or should have known' of the registration and/or use of the trademark prior to registering the domain name"). The Panel finds that in the present case, the Respondent had the Complainant's STINGER Mark in mind when registering and using the Disputed Domain Name. This is especially true since the Respondent's website mimicked the Complainant's site and included images of products bearing the STINGER Mark.

Finally, panels have found that the non-use of a domain name resolving to an error landing page with no substantive content would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds that the current non-use of the Disputed Domain Name also does not prevent a finding of bad faith in the circumstances of this proceeding.

In sum, the Panel concludes that the circumstances of this case, including the claim that the Disputed Domain Name had been used to impersonate the Complainant and its website, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the current passive holding of the Disputed Domain Name to which the Disputed Domain Name has been put, support an inference of bad faith.

Based on the available record, the Panel finds that the third element of the Policy has been established.

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 <stingeroffroad.shop> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: February 19, 2024