

ADMINISTRATIVE PANEL DECISION

Air up group GmbH v. Betty CC

Case No. D2024-0259

1. The Parties

The Complainant is Air up group GmbH, Germany, internally represented.

The Respondent is Betty CC, China.

2. The Domain Name and Registrar

The disputed domain name <airupwaterbottle.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 22, 2024. On January 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 22, 2024, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 23, 2024, 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 amended Complaint on January 24, 2024.

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 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 26, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on March 4, 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 operates a scented water bottle under the AIR UP mark from its base in Germany. It has launched its products in various European countries and in the United States of America and markets and sells from its website at “<https://intl.air-up.com>”. It owns various trade mark registrations for its AIR UP mark including European Union Trade Mark No. 018002837, registered on May 24, 2019.

The disputed domain name was registered on August 1, 2023. It resolves to a website promoting the “Lonestar Drinkmates” brand of scented water bottles. The website purportedly offers ordering options for the customized bottles and suggests contacting the sales team for the orders.

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 it owns registered trade mark rights for its AIR UP mark as noted above and that the disputed domain name incorporates the Complainant’s mark and that the inclusion of the phrase “water bottle” in the disputed domain name only adds to potential Internet user confusion.

The Complainant says that there is no evidence of the Respondent’s use or demonstrable preparations to use the disputed domain name in connection with a genuine offering of goods or services. Rather it submits that the Respondent’s activities involve the sale of the exact same type of goods as the ones sold by the Complainant, indicating an intention to exploit the Complainant’s brand.

It also asserts that there is no indication that the Respondent, as an individual, business, or organization, has been commonly known by the disputed domain name or that there is any apparent link between the Respondent and the disputed domain name. The Complainant says that nowhere on the Respondent’s website is there any reference to the “air up water bottle”, instead, the Respondent’s branding is for the “lone star drink mate” water bottle.

This says the Complainant indicates the Respondent has used the disputed domain name to capitalize on the reputation and goodwill attaching to the Complainant’s AIR UP trade mark in order to confuse and divert Internet users to a website featuring the same sort of product. This it says amounts to conduct which fulfills the criteria of paragraph 4(b)(iv) of the Policy.

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 Complainant’s trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced 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, “water” and “bottle” 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.

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 Complainant has submitted that there is no evidence of the Respondent’s use or demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services.

It also asserts that there is no indication that the Respondent, as an individual, business, or organization, has been commonly known by the disputed domain name or that there is any apparent link between the Respondent and the disputed domain name. Rather, the Complainant has submitted that the Respondent’s activities involve the sale of the exact same type of goods as those sold by the Complainant, but under a different trade mark which it says indicates an intention to exploit the Complainant’s brand which conduct is not compatible with the Respondent having rights or legitimate interests in the disputed domain name.

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 registered the disputed domain name on August 1, 2023, some years after the Complainant had commenced selling its scented water bottles under the AIR UP mark and well after the registration of the Complainant’s European Union trade mark. The Respondent is also supposedly selling scented water bottles but sells them under its own “Lonestar Drinkmates” brand. It appears to the Panel that it has only registered the disputed domain name so as to confuse and divert Internet users searching for the Complainant’s products. In these circumstances, it appears most likely that

the Respondent was well aware of the Complainant's AIR UP trade mark when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where the Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of the website.

The Complainant and the Respondent are selling the same product but under very different trade marks. There is no evidence that the Respondent has ever used or is known by the Complainant's AIR UP mark and yet it has registered the disputed domain name which incorporates that mark together with the words "water" and "bottle". The only credible explanation for it choosing to do this is so as to confuse Internet users looking for the Complainant's products in order to divert them to its website. This amounts to intentional targeting of the Complainant's trade mark for commercial purposes in terms of paragraph 4(b)(iv) of the Policy, which is evidence of registration and use of the disputed domain name in bad faith.

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 <airupwaterbottle.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: March 14, 2024