

ADMINISTRATIVE PANEL DECISION

LSKD Pty Ltd ACN 123 602 737 v. Qiu Xiaofeng
Case No. D2024-0316

1. The Parties

The Complainant is LSKD Pty Ltd ACN 123 602 737, Australia, represented by Alvin Legal, Australia.

The Respondent is Qiu Xiaofeng, China.

2. The Domain Name and Registrar

The disputed domain name <lskdaustralia.net> is registered with Paknic (Private) Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 25, 2024. On January 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 26, 2024, the Registrar transmitted by email to the Center its verification disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 29, 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 amendment to the Complaint on January 29, 2024.

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 January 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 23, 2024.

The Center appointed Edoardo Fano as the sole panelist in this matter on February 28, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is LSKD Pty Ltd ACN 123 602 737, an Australian company operating in the field of clothing, and is the licensee of the following trademark registrations for LSKD, owned by LSKD IP Pty Ltd:

- Australian Trademark Registration No. 1852071 for LSKD, registered on June 15, 2017;
- Australian Trademark Registration No. 1936592 for LSKD, registered on June 26, 2018;
- Australian Trademark Registration No. 2254196 for LSKD and design, registered on March 7, 2022;
- Australian Trademark Registration No. 2310153 for LSKD and design, registered on October 25, 2022.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on July 26, 2023, and it resolves to a website in which the Complainant's trademark and logo, as well as the Complainant's products copyrighted photographs, are displayed, and the same products as the Complainant are purportedly offered for sale.

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 states that the disputed domain name is confusingly similar to its trademark LSKD, as the disputed domain name wholly incorporates the Complainant's trademark, with the addition of the term "australia".

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, which infringes the Complainant's trademark rights.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark LSKD is known. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name to disrupt the Complainant's business and to attract, for commercial gain, Internet users to the Respondent's website, creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, qualifies as bad faith registration and use.

B. Respondent

The Respondent has made no reply to the Complainant's contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (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 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 3.0](#), section 1.7.

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 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 "australia", 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.

It is also well accepted that a generic Top-Level Domain ("gTLD"), in this case ".net", is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

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.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. 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 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.

Panels have held that the use of a domain name for illegal activity, here impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Moreover, the Panel finds that the composition of the disputed domain name 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.

Accordingly, 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.

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, regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant’s trademark LSKD in the field of clothing is clearly established, and the Panel finds that the Respondent likely knew of the Complainant and deliberately registered the confusingly similar disputed domain name, especially because the website at the disputed domain name is displaying the Complainant’s trademark and logo, as well as the Complainant’s products copyrighted photographs, and is purportedly offering for sale the same products as the Complainant.

The Panel further notes that the disputed domain name is also used in bad faith, since the Respondent is trying to impersonate the Complainant with the purpose of intentionally attempting to create a likelihood of confusion with the Complainant’s trademark as to the disputed domain name’s source, sponsorship, affiliation, or endorsement. Panels have held that the use of a domain name for illegal activity, here impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), sections 3.1.4 and 3.4.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, including the Complainant’s trademark in its entirety (with the addition of the term “australia”, that is the Complainant’s home country) further supports a finding of bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Based on the available record, the Panel finds 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 <lskdaustralia.net> be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: February 29, 2024