

ADMINISTRATIVE PANEL DECISION

LSKD Pty Ltd ACN 123 602 737 v. Client Care, Web Commerce
Communications Limited
Case No. D2024-0317

1. The Parties

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

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

2. The Domain Names and Registrar

The disputed domain names <lskd-australia.com> and <lskd-uk.com> are registered with Alibaba.com Singapore E-Commerce 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 names. On January 26, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 30, 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 21, 2024.

The Center appointed William F. Hamilton as the sole panelist in this matter on March 7, 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 is an international retailer specializing in performance-oriented sportswear and attire for active lifestyles.

The Complainant is licensed to use the following trademark registrations for the trademark LSKD (the "Mark") which is owned by the related corporation LSKD IP Pty Ltd.

1. United Kingdom Registration No. UK00801442047, dated June 10, 2019.
2. International Registration No.1442047, dated October 18, 2018.
3. Australian Registration No. 1852071, dated January 10, 2018.
4. Australian Registration No. 1936592, dated February 5, 2019.

The Complainant's principal website is "www.lskd.co". The Complainant owns numerous domain registrations that prominently feature the Mark.

The disputed domain name <lskd-uk.com> was registered on July 12, 2023. The disputed domain name <lskd-australia.com> was registered on December 4, 2023. At the time of the Decision, the disputed domain name <lskd-uk.com> resolves to a website offering products for sale that resemble the clothing offered for sale by the Complainant, with web pages prominently featuring the Complainant's Mark. The disputed domain name <lskd-australia.com> does not resolve to any active website.

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 names. The Complainant asserts the disputed domain names are confusingly similar to the Mark because the disputed domain names are composed by adding the terms "uk" and "australia" as suffixes to the Mark. The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain names, that the Respondent is not generally known by the disputed domain names, never operated a business under the disputed domain names, and never engaged in any bona fide commercial activity in connection with the disputed domain names. The Complainant asserts that the Respondent knew of the Mark when registering the disputed domain names and has registered and used the disputed domain names in bad faith to attract unsuspecting Internet users seeking the Complainant to the Respondent's websites for commercial benefit.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names were 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 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 the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's Mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the Mark. [WIPO Overview 3.0](#), section 1.7. Adding the country designation terms, either "uk" or "australia", to the Mark in the disputed domain names does not prevent a finding of confusing similarity between the disputed domain names and the Mark. [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.

The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain names and there is no evidence that the Respondent is generally known by the disputed domain names or engaged in any bona fide commercial activity in connection with the disputed domain names.

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 names. The disputed domain name <lskd-uk.com> resolves to a commercial website featuring the Complainant's Mark and offering for sale athletic styled clothing. The disputed domain name <lskd-australia.com> resolves to an error page. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the disputed domain name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

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 names, such as those enumerated in the Policy or otherwise.

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 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 finds that the Respondent has knowingly registered and used the disputed domain names fully cognizant of the Complainant's invented Mark to attract unsuspecting Internet users to the Respondent's website, to which the disputed domain name <lskd-uk.com> resolves, for commercial gain by creating a likelihood that Internet users will believe the products offered for sale at the Respondent's website associated with <lskd-uk.com>, are approved, sponsored, or endorsed by the Complainant. The Respondent has wholly adopted the Complainant's Mark in the disputed domain name <lskd-uk.com> and created a website that feature the sale of active, functional sportswear under the Complainant's Mark. [WIPO Overview 3.0](#), section 3.4.

The disputed domain name <lskd-australia.com> resolves to an inactive website displaying an error page. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel finds the non-use of the disputed domain name <lskd-australia.com> does not prevent a finding of bad faith in the circumstances of 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 names <lskd-australia.com> and <lskd-uk.com> be transferred to the Complainant.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: March 21, 2024