

ADMINISTRATIVE PANEL DECISION

Ledworks S.r.l. v. KevinJ Matthews
Case No. D2024-0907

1. The Parties

The Complainant is Ledworks S.r.l., Italy, represented by Kopjra S.r.l., Italy.

The Respondent is KevinJ Matthews, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <twinklypromo.com> is registered with Hello Internet Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 29, 2024. On March 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 5, 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 (Twinkly Shop, Inc) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 6, 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 March 8, 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 March 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 9, 2024.

The Center appointed Jeremy Speres as the sole panelist in this matter on April 15, 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 Italian company. Apart from the trade mark details referenced below, no further information concerning the Complainant's business is provided in the Complaint. However, pursuant to its general powers articulated inter alia in paragraphs 10 and 12 of the Rules, the Panel quotes from the Complainant's website located at "www.twinkly.com/en-row/pages/our-story":

"Twinkly is a brand created by Italian tech company Ledworks, a market leader in smart lighting. Just years after its 2016 launch, Twinkly has already become a global brand, revolutionizing the world of decorative lighting with a range of technologically advanced, patented, and award-winning products."

The Complainant owns various trade mark registrations for its TWINKLY mark in various jurisdictions, including in the Respondent's jurisdiction under United States Trade Mark Registration No. 5,619,776 TWINKLY (stylised) in classes 9 and 11, having a registration date of December 4, 2018.

The disputed domain name was registered on December 19, 2023, and resolves to a website entitled "twinkly", ostensibly for a business selling Christmas decorations. The website features the Complainant's stylized TWINKLY mark identically as registered and logo, as well as various product images and descriptions sourced from the Complainant's 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 name. Notably, the Complainant contends that the disputed domain name's website was registered and used in bad faith given that it impersonates the Complainant's TWINKLY offering.

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 "promo", 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 general impression created by the website to which the disputed domain name resolves is one of impersonation of the Complainant. UDRP panels have categorically held that the use of a domain name for illegal activity (here impersonation) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#) at section 2.13.1. To the extent that the disputed domain name’s website might be considered that of a reseller of the Complainant’s products, it does not meet the requirements of the well-known *Oki Data* test given that the site does not accurately and prominently disclose the Respondent’s relationship with the Complainant. *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and [WIPO Overview 3.0](#) at section 2.8.

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.

Panels have held that the use of a domain name for illegal activity, here, impersonation, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Considering the indicators of impersonation apparent on the Respondent’s website, highlighted in the Factual Background section above, it is clear that the Respondent intended to impersonate the Complainant. The composition of the disputed domain name, featuring the Complainant’s mark plus a term – “promo” – that demonstrably corresponds to the Complainant’s area of business activity (the Complainant would appear to offer promotions of its products from time to time), strengthens this conclusion. [WIPO Overview 3.0](#) at section 3.2.1. Paragraph 4(b)(iv) of the Policy is thus eminently applicable.

The Panel also notes that the Respondent apparently supplied incomplete or false address details on the Respondent’s website; the Center’s communications to the listed address information disclosed under the “Contact us” tab on the disputed domain name could not be delivered by the courier service to the Respondent. In the circumstances of this case, this suggests an attempt by the Respondent to evade pursuit, which is a further indicator of bad faith. *Kabushiki Kaisha Raibudoa v. Kubota, A*, WIPO Case No. [D2001-0817](#).

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 <twinklypromo.com> be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: April 23, 2024