

ADMINISTRATIVE PANEL DECISION

Rathbones Group Plc v. Sasha Ken, Investment Case No. D2024-1062

1. The Parties

The Complainant is Rathbones Group Plc, United Kingdom, represented by ZeroFox, United States of America.

The Respondent is Sasha Ken, Investment, United States of America

2. The Domain Name and Registrar

The disputed domain name <rathbonesinvestment.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 13, 2024. On March 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 15, 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 March 21, 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 March 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 17, 2024.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on April 22, 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

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint. In addition, given the minimal supporting evidence provided by the Complainant, the Panel has, pursuant to its general powers articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, undertaken limited factual research into matters of public record (including a trade mark search) as the Panel considered such information to be useful to assess the case merits and reach a decision.

The Complainant is a provider of personalized investment management and wealth management services for private investors and trustees and is listed on the London Stock Exchange.

The Complainant is the owner of the trade mark RATHBONES, registered in the United Kingdom under number UK00002009321 filed on January 11, 1995 and registered on March 15, 1996.

The Complainant is also the owner of the domain name <rathbones.com> since 1996.

There is no information known on the Respondent apart from the details as they appear on the Whois record.

The disputed domain name was registered on September 2, 2023. The disputed domain name used to point to a website impersonating the Complainant.

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 RATHBONES trade mark in which the Complainant has rights as the disputed domain name incorporates the entire RATHBONES trade mark with the mere addition of the term "investment" which does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trade mark.

The Complainant asserts that it has not authorized, licensed or otherwise permitted the Respondent to use its trade mark or to imply any connection between the Complainant and the Respondent. The Complainant contends that the unauthorized use of the RATHBONES trade mark and name for seemingly fraudulent purposes does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The Complainant contends that the Respondent registered the disputed domain name in bad faith as it includes the whole RATHBONES trade mark. The Complainant then argues that the disputed domain name is used in bad faith. The Complainant points to the previous content of the website associated with the disputed domain name that used to fraudulently impersonate the Complainant. The Complainant also alleges that MX records used to be activated for the disputed domain name. Finally, the Complainant argues that the current passive use of the disputed domain name does not cure the Respondent's bad faith under the doctrine of passive holding.

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 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.

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

The entirety of the RATHBONES trade mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trade mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "investment", 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 trade 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.

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.

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.

The Complainant's sole argument to automatically conclude that the disputed domain name was registered in bad faith is that it includes its exact trade mark. Whilst this is a circumstance creating a strong indicia of bad faith registration it will not always be the case under the Policy.

However, in the present case, the Panel finds that the Respondent, at the time of registration of the disputed domain name, must have been aware of the Complainant's trade mark RATHBONES, as, in addition to the fact that the RATHBONES trade mark is fully reproduced in the disputed domain name, (i) the disputed domain name was registered relatively recently and many years after the registration of the trade mark RATHBONES, (ii) the targeted choice of the term added to the RATHBONES trade mark in the disputed domain name, namely the term "investment" which refers to the Complainant's core activity clearly shows the Respondent's intention to register a domain name targeting the Complainant and (iii) as per the Panel's verification, the first page of Google search results obtained by searching for the term "rathbonesinvestment" all relate to the Complainant.

As for use of the disputed domain name, the Complainant has provided evidence of the fact that the disputed domain name used to point to a website impersonating the Complainant. This shows that the disputed domain name was used to point to a website mimicking the Complainant and seeking to obtain some kind of undue commercial gain.

On this basis, the Panel finds that, as per paragraph 4(b)(iv) of the Policy, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

Panels have held that the use of a domain name for illegal activity, here impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <rathbonesinvestment.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: May 6, 2024