

ADMINISTRATIVE PANEL DECISION

Fit Foods Ltd. v. Tony Khuu, service
Case No. D2024-1153

1. The Parties

The Complainant is Fit Foods Ltd., Canada, represented by Palmer IP Inc., Canada.

The Respondent is Tony Khuu, service, Canada.

2. The Domain Name and Registrar

The disputed domain name <mutantnation.net> 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 March 15, 2024. On March 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 18, 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 (MutantNation.net dba Mutant Nation) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 19, 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 20, 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 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 16, 2024.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on April 19, 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 a Canadian company, specialized in the manufacturing, distribution and selling of nutrition and lifestyle products such as vitamins or supplements around the world.

The Complainant is the owner of several trademarks incorporating the terms “mutant” and “nation” (hereinafter the “MUTANT NATION Trademarks”):

- the Canadian word mark MUTANT NATION No. TMA1032373 registered on June 26, 2019, for products in class 25;
- the Canadian word mark MUTANT NATION No. TMA1194047 registered on August 9, 2023, for products and services in classes 3, 5, 9, 14, 16, 18, 21, 25, 26, 28, 29, 30, 33, 35, 38, 41, 42, 43 and 44.

The Complainant is also the owner of several registered trademarks consisting of the word “MUTANT”.

The Complainant has also registered on October 31, 2021, the following domain name <mutantnation.com>.

The disputed domain name was registered on February 6, 2020, by an individual located in Canada. At the time of the Complaint, the disputed domain name redirected to a website selling nutritional supplements products. At the time of the Decision, the disputed domain name redirected to an error page indicating the shop is no longer available.

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 identical to its trademarks over which it has statutory and common law rights. The Complainant asserts that it owns several trademarks incorporating the word “mutant” it has used since 2006 to market its products. The Complainant submits it has used the expression “MUTANT NATION” since a long time on its websites. The Complainant underlines the disputed domain name redirects to a website selling nutritional supplements products including supplements targeting the bodybuilding community. The Complainant stands that the disputed domain name reproduces its MUTANT NATION Trademarks in their entirety and is used to sell product similar to those of the Complainant.

Then, the Complainant submits that the Respondent has no rights or legitimate interest in respect of the disputed domain name. The Complainant underlines the disputed domain name is used to market nutritional supplements targeting the bodybuilding community while reproducing the Complainant MUTANT NATION Trademarks which are well known in the bodybuilding community. For the Complainant, the Respondent knew or ought to have known that registering the disputed domain name was likely to cause confusion with the Complainant's MUTANT NATION Trademarks and products. The Complainant contends that the Respondent has registered the disputed domain name to stand to gain commercially by misleadingly diverting consumers to its website.

Finally, the Complainant asserts that the disputed domain name was registered and is being used in bad faith since the Complainant has used its trademarks to market its products since 2006 and well before the registration of the disputed domain name. The Complainant submits that the Respondent is using the disputed domain name in bad faith to disrupt the Complainant's business. The Complainant considers the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's MUTANT NATION Trademarks and products. For the Complainant, the fact the Respondent is using the disputed domain name to market nutritional supplements that are the same or very similar to those of the Complainant is evidence of the Respondent bad faith since it is attempting to trade off the Complainant's reputation while damaging the Complainant's goodwill in its trademarks.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (i) the disputed domain name is 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 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 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 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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 Panel further notes that the disputed domain name reproduces the Complainant's MUTANT NATION Trademarks in their entirety and notes that the Respondent was using the disputed domain name to sell products similar to those of the Complainant, which carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Finally, at the time of the Decision, the website linked to the disputed domain name is no longer accessible and redirects to an error page indicating that the store is no longer available.

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, the Panel notes that the Respondent has registered the disputed domain name, which is identical to the MUTANT NATION Trademarks, one of them having been registered before the registration of the disputed domain name, and well after the Complainant has extensively used the phrasing "MUTANT NATION" as part of its activity.

Furthermore, the Panel notes that at the time of the registration of the Complaint, the disputed domain name used to redirect to an online shop selling products very similar to those of the Complainant and targeting the same type of customer.

Therefore, the Panel considers it unlikely that the Respondent came randomly with a name identical to the Complainant's MUTANT NATION Trademarks for use in connection with the same type of products, leading to a conclusion of registration in bad faith.

At the time of the decision, the disputed domain name redirects to an error page indicating the online shop is no longer available.

Finally, the Panel notes that the Respondent has hidden its identity through privacy or proxy services and did not reply to the Complainant's contentions and did not provide any reasonable explanation as to the reason why the Respondent selected such composition for the disputed domain name.

Having reviewed the record, the Panel finds there is sufficient evidence to consider that the Respondent has registered and is using 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 <mutantnation.net> be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: May 3, 2024