

ADMINISTRATIVE PANEL DECISION

Sleep Country Canada Holdings Inc. v. Brent Asselin
Case No. D2024-1222

1. The Parties

The Complainant is Sleep Country Canada Holdings Inc., Canada, represented by Gowling WLG (Canada) LLP, Canada.

The Respondent is Brent Asselin, Canada.

2. The Domain Name and Registrar

The disputed domain name <leep.country> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 21, 2024. On March 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 21, 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 (Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 22, 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 26, 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 April 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2024. The Response was filed with the Center on April 30, 2024.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on May 11, 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. Redaction of the name of the Respondent

In his response, the Respondent has made the request that “any identifying information related to [him] be redacted” before the publication of the Decision. The Respondent highlights the sensitive nature of this matter and the “demonstrated libelous nature of the Complainant and their council” to support his request.

Paragraph 4(j) of the Policy provides (among others) that “[a]ll decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision”. Paragraph 16(b) of the Rules provides that “[e]xcept if the Panel determines otherwise (see paragraph 4(j) of the Policy), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining a complaint to have been brought in bad faith (see paragraph 15(e) of these Rules) shall be published”.

In the light of the specific circumstances of the case, the obvious bad faith of the Respondent (see below) and the fact the Respondent seems to have engaged in a pattern of abusive domain name registration targeting the Complainant, the Panel has decided to not redact the name of the Respondent from the Decision.

The Respondent has not provided any evidence to support his claim regarding the potential risks for security interests or libel. Furthermore, no section of the Decision is likely to pose a risk to national security or to weaken the Respondent’s libel claims.

Finally, it is demonstrated that the Respondent has engaged into a pattern of abusive domain name registration involving the trademarks of the Complainant by using the same registration patterns and using the disputed domain name identically (to display a confidential report).

Therefore, the request of the Respondent to have his name redacted from the decision is denied.

5. Factual Background

The Complainant is a Canadian mattress retailer with over 250 stores operating in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, and Nova Scotia.

The Complainant is the owner of several trademarks in Canada, Australia and United Kingdom incorporating the terms “SLEEP” and “COUNTRY” (hereinafter the “SLEEP COUNTRY” Trademarks) including the following:

- the Canadian figurative mark SLEEP COUNTRY No. TMA726409 registered on October 21, 2008, for products and services in classes 20, 24, 35, 37, and 39; and
- the Canadian figurative mark SLEEP COUNTRY No. TMA726408 registered on October 21, 2008, for products and services in classes 20, 24, 35, 37, and 39.

The Complainant has also registered in 1999, the domain name <sleepcountry.ca> to operate its primary website.

The disputed domain name was registered on February 10, 2023, by an individual located in Canada, a former employee of the Complainant, whose employment with the Complainant was terminated by the Complainant on June 4, 2020. The disputed domain name automatically redirects to the subdomain <sl.eep.country>, which resolves to a PDF document consisting of a confidential report prepared by a cybersecurity and investigation firm for the Complainant (hereinafter the “Report”).

On January 26, 2023, a few weeks before the Respondent registered the disputed domain name, the Respondent was ordered to transfer to the Complainant the domain name <sleep.country>, which the Respondent already registered to display the Report. *Sleep Country Canada Holdings Inc. v. Name Redacted*, WIPO Case No. [D2022-4428](#).

6. 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 its trademarks, considering that it identically matches the final ten characters of the SLEEP COUNTRY Trademarks, which is comprised of a total of twelve characters. The Complainant adds that the disputed domain name resolves to the subdomain <sl.eep.country> which incorporates the whole of the SLEEP COUNTRY Trademarks. The Complainant also claims that confusing similarity may be affirmed where an examination of the website to which a domain name resolves indicates that the complainant's trademark is being targeted.

Then, the Complainant submits that the Respondent has no rights or legitimate interest in respect of the disputed domain name. The Complainant underlines that there is no evidence to suggest that the Respondent has ever used, or that the Respondent has made any demonstrated preparations to use, the disputed domain name, or a name corresponding to the same, in connection with a bona fide offering of goods or services. The Complainant adds that the Respondent is not licensed, or otherwise authorized, directly or indirectly, to register or use the SLEEP COUNTRY Trademarks in any manner whatsoever, including in, or as part of, a domain name. The Complainant considers that the Respondent registered the disputed domain name as part of a scheme to attract unsuspecting third parties believing the Respondent to be associated with or authorized by the Complainant, and in order to publicly display the Complainant's highly confidential information, notwithstanding his knowledge that the Complainant objects to such disclosure.

Finally, the Complainant asserts that the disputed domain name was registered and is being used in bad faith since the Respondent is a former employee of the Complainant who was terminated and has used the disputed domain name as an instrument to commit various torts including breach of confidence in order to damage the business of the Complainant and others. The Complainant underlines that the Respondent is using the disputed domain name to publicly display highly confidential information of the Complainant, including by reproducing a copy of the confidential Report. The Complainant considers that the purpose behind registration of the disputed domain name was to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant's trademarks.

B. Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

First, the Respondent argues that the Complainant's rights do not endlessly extend to every possible subset or collection of letters for which their word mark is registered. The Respondent adds that the disputed domain name does not contain the word "sleep" and is not confusingly similar to it. The Respondent also considers that there is no registered subdomain but a wildcard subdomain registration.

Then, the Respondent submits that the only reason this UDRP claim is being filed is because the Complainant does not want the Report published. The Respondent claims for Reverse Domain Name Hijacking, considering that, irrespective of the domain name used to host the Report, the Complainant has

abused the UDRP procedure by using it, not with the intention of protecting its trademarks as required by this procedure, but with the sole aim of silencing the Respondent and extinguish its rights to freedom of speech.

The Respondent considers that its use of the disputed domain name has only been in good faith, and no attempt has been made to profit or otherwise interfere with the Complainant's marks.

7. 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 Panel finds the mark is recognizable 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.

The Panel notes that the applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is generally viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. However, where the applicable TLD and the second-level portion of the domain name in combination contain the relevant trademark, panels may consider the domain name in its entirety for purposes of assessing confusing similarity (e.g., for a hypothetical TLD ".mark" and a mark "TRADEMARK", the domain name <trade.mark> would be confusingly similar for UDRP standing purposes). [WIPO Overview 3.0](#), section 1.11.3.

As a result, regarding the disputed domain name, the Panel finds that it is composed of (i) the term "eep" and, (ii) the TLD ".country". The disputed domain name differs from the SLEEP COUNTRY Trademarks by the omission of the first and second letter. On a side-by-side comparison of the disputed domain name and the SLEEP COUNTRY Trademarks, the Panel accepts that there may be differing views as to whether the former is confusingly similar to the latter.

On this point, the Complainant submits that the Panel should compare the broader subdomain <sl.eep.country> with the Complainant's trademarks. According to the Respondent however, in this case there exists no registered subdomain, there exists simply a wildcard subdomain.

The Panel finds it relevant to also take into account "spanning the dot" cases when the second-level portion of a domain name and the TLD contain the whole of a complainant's trademark (e.g., <trade.mark>).

If the Complainant is correct that the Respondent has activated the full subdomain <sl.eep.country> then it is rather obvious that the whole of the Complainant's trademark is reflected in the disputed domain name

including the sub-domain and the website to which the disputed domain name resolves. See, e.g., *MGLM Holdings B.V. v. Yungu Jo, DOMAIN-FOR-SALE---*, WIPO Case No. [D2021-3826](#). In this context, regarding the sub-domain of the website to which the disputed domain name resolves, the Panel finds that it is composed of (i) the term “SLEEP” with a dot between the “L” and the first “E”, and, (ii) the TLD “.country”. On that basis, the Panel concludes that the disputed domain name is confusingly similar to the relevant mark.

To the extent the disputed domain name is not pointing to a sub-domain but is, as the Respondent suggests, wildcarded, the Panel first notes that there is no question the Complainant is being targeted by the Respondent; in this respect it is noted that the content of a website may provide indication as to a respondent's targeting of a specific trademark through the domain name chosen. [WIPO Overview 3.0](#), section 1.15. Accordingly, the context in which the domain names are being used may be helpful to assess confusing similarity. Here, the disputed domain name points to a website (<badsleep.ca>) in which the SLEEP COUNTRY Trademarks of the Complainant are displayed and which resolves to a PDF document consisting of a confidential report about the Complainant and where the Complainant's name is displayed in bold characters on the very first page. This plainly indicates that the Respondent is targeting the Complainant's trademarks through the disputed domain name.

Therefore, and regarding the specific circumstances of the case, 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.

Indeed, the Panel finds that the Respondent cannot be considered as making a legitimate noncommercial or fair use of the disputed domain name, when reproducing a confidential document containing sensitive and confidential information on the page on which resolves the disputed domain name.

In addition, as analyzed in the precedent procedure between the Complainant and the Respondent (See *Sleep Country Canada Holdings Inc. v. Name Redacted*, WIPO Case No. [D2022-4428](#)), even by assimilating the use of the disputed domain name by the Respondent to a sort of criticism site, this would not provide a basis for rights or legitimate interest of the Respondent, given the purpose of the disputed domain name is to effectively impersonate and therefore trigger confusion with the Complainant trademarks. [WIPO Overview 3.0](#), section 2.6.2.

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 was a former employee of the Complainant and that he has registered the disputed domain name a few weeks after the Respondent was ordered to transfer to the Complainant the domain name <sleep.country>, where the Respondent already reproduced the Report. See *Sleep Country Canada Holdings Inc. v. Name Redacted*, WIPO Case No. [D2022-4428](#). Therefore, there is no doubt that the Respondent was aware of the Complainant trademark rights and has intentionally chosen the disputed domain name to create a false association with the Complainant and its trademarks.

Therefore, regarding the content of the website to which the disputed domain name redirects, the timing and circumstances of the registration, the fact that the Respondent was already ordered to transfer to the Complainant a domain name, the Panel finds that the Complainant has established the third element of the Policy.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

Here the Panel does not find that the Complaint was brought in bad faith and does not constitute an attempt at Reverse Domain Name Hijacking.

8. 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 <leep.country> be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: May 25, 2024