

ADMINISTRATIVE PANEL DECISION

Camilla and Marc Operations Pty td v. Qhdhyc Ecdew
Case No. D2024-1263

1. The Parties

The Complainant is Camilla and Marc Operations Pty td, Australia, represented by Spruson & Ferguson Lawyers Pty Limited, Australia.

The Respondent is Qhdhyc Ecdew, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <camillamarc.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 25, 2024. On March 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 25, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 23, 2024.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on May 1, 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 Camilla and Marc Operations Pty td, an Australian fashion brand established since 2003.

The Complainant is the owner of trademark registrations, such as:

- Australia Trademark Registration No. 2033865 (registration date: August 29, 2019) for the mark CAMILLA AND MARC, in classes 3, 4, and 14;
- Australia Trademark Registration No. 2117466 (registration date: September 4, 2020) for the mark CAMILLA AND MARC, in classes 20 and 24; and
- United States of America Trademark Registration No. 6610144 (registration date: January 11, 2022) for the mark CAMILLA AND MARC, in class 24.

The Complainant operates the domain name <camillaandmarc.com>, registered on November 08, 2003.

The Respondent is Qhdhyc Ecdew, from, Hong Kong, China.

The disputed domain name <camillamarc.com> was registered on June 2, 2022, and resolves to a website that displays the Complainant's trademark without any disclaimer of association (or lack thereof) with Complainant, and purportedly offers for sale similar clothing and apparel articles for discounted prices.

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.

The Complainant argues that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The disputed domain name resolves to a website that impersonates the Complainant and it is also offering for sale similar clothing articles. This website features the Complainant's trademark, without authorization.

There is no evidence that the Respondent has made demonstrable preparations to use the disputed domain name for legitimate purposes, nor is there any evidence that the Respondent is using the disputed domain name in connection with a bona fide offering of goods and services.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant finds that the disputed domain name is used to take unfair advantage of the Complainant's rights for commercial gain, since Internet users and the Complainant's clients would inevitably associate the content related to the disputed domain name with the Complainant's prior trademarks.

The Complainant stresses that the Respondent is not commonly known by the terms "camilla and marc."

According to the Complainant, it has prior rights over the trademarks CAMILLA AND MARC and has not authorized the registration and use of the disputed domain name, nor the use of its trade name and trademarks by the Respondent.

The Respondent is not affiliated to or authorized by the Complainant to use or register the disputed domain name.

The Complainant's trademark rights for CAMILLA AND MARC predate the registration of the disputed domain name.

The Complainant also argues that the Respondent was aware of the Complainant's rights and has clearly registered the disputed domain name to target the Complainant's trademark, and that the registration of the disputed domain name was conducted in bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent has not responded to the Complaint.

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademarks or service marks 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

The Complainant has shown rights in respect of the trademark CAMILLA AND MARC for the purposes of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["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 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 note that the disputed domain name resolves to a website that displays the Complainant's trademark without any disclaimer of association (or lack thereof) with the Complainant and purportedly offers for sale similar clothing and apparel articles. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use.

Furthermore, panels have held that the use of a domain name for illegal activity, here claimed as 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.

In the present case, the Panel notes that the Respondent was clearly aware of the Complainant's trademark CAMILLA AND MARC when the Respondent registered the disputed domain name, as the Complainant's trademark registrations CAMILLA AND MARC as well as its domain name <camillaandmarc.com> well predate the registration date of the disputed domain name. The Panel also notes that the Respondent attempts to attract Internet users to its online store website by creating a likelihood of confusion with the Complainant's trademark and logo, as well as by offering the similar goods for sale under the Complainant's trademark.

Panels have held that the use of a domain name for illegal activity, here claimed as sale of counterfeit goods, phishing, impersonation/passing off constitutes bad faith, according to [WIPO Overview 3.0](#), section 3.4. The Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <camillamarc.com> be transferred to the Complainant.

/Mario Soerensen Garcia/

Mario Soerensen Garcia

Sole Panelist

Date: May 3, 2024