

ADMINISTRATIVE PANEL DECISION

Sarah & Sebastian Pty Ltd v. Huang Yiyong
Case No. D2024-1386

1. The Parties

The Complainant is Sarah & Sebastian Pty Ltd, Australia, represented by Bespoke, Australia.

The Respondent is Huang Yiyong, China.

2. The Domain Name and Registrar

The disputed domain name <thesarahsebastian.com> (the “Domain Name”) is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 2, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 4, 2024 the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Gransy, s.r.o. d/b/a Subreg.cz) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 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 April 9, 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 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 7, 2024.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on May 27, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a jewelry studio headed by its founders, designers Robert Sebastian Grynkofki and Sarah Munro. It was established in 2012 and have grown to be a recognizable jewelry brands in Australia and New Zealand, as well as in other countries around the world.

The Complainant owns several trademarks containing the words SARAH & SEBASTIAN, such as Australian trademark number 1628477 (registered on June 13, 2014). The Complainant owns the domain name <sarahandsebastian.com> from which it runs an online store.

The Domain Name was registered on June 7, 2023. The Domain Name resolves to a webpage that attempts to pass itself off as the Complainant. The Respondent's website uses the Complainant's trademark, logos, photographs and layouts.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations and argues that the Domain Name is confusingly similar to the Complainant's trademark. It consists entirely of the trademark prefixed with "the".

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant asserts that the Respondent has not been granted any authorization to use the Complainant's trademark. The Respondent's use of the Domain Name - to pass itself off as the Complainant - is indicative of the Respondent's lack of legitimate interests in the Domain Name.

The Complainant argues that the Domain Name was registered to create a confusion with the Complainant. The Respondent's use of the Domain Name is evidence of bad faith. The Domain Name is used for a website to deceive and confuse consumers into thinking that the Respondent's website is either the Complainant's legitimate website or affiliated with or endorsed by the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

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 Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has established that it has rights in the trademark SARAH & SEBASTIAN. The Domain Name incorporates the Complainant's trademark with the addition of "the" and the deletion of the ampersand. The alteration does not prevent a finding of confusing similarity between the Domain Name and the trademark. [WIPO Overview 3.0](#), section 1.8. When assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"). [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which a respondent may demonstrate rights or legitimate interests in a disputed domain name. While 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 often impossible 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. 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.

Based on the evidence, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent’s use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. Finally, the Panel finds that the composition of the Domain Name carries a risk of implied affiliation with the Complainant.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

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 Respondent most likely knew of the Complainant when he registered the Domain Name. It follows from the composition and use of the Domain Name. The Respondent’s use of the Domain Name – to pass itself off as the Complainant - indicates fraudulent intent. Moreover, the Respondent has not offered any explanation as to why it registered the Domain Name, nor provided any evidence of actual or contemplated good faith use of the Domain Name.

Based on the available record, 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 the Domain Name, <thesarahsebastian.com>, transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: June 7, 2024