

ADMINISTRATIVE PANEL DECISION

Dansko, LLC v. Jeffrey Mosier
Case No. D2024-1505

1. The Parties

The Complainant is Dansko, LLC, United States of America (“United States”) represented by Cozen O'Connor, United States.

The Respondent is Jeffrey Mosier, United States.

2. The Domain Name and Registrar

The disputed domain name <danskoshoesus.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 9, 2024. On April 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 10, 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 (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 11, 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 11, 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 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 10, 2024.

The Center appointed Angela Fox as the sole panelist in this matter on May 16, 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 company based in Pennsylvania, United States, which specializes in the provision of comfort footwear, including in the United States, where the parties are based. The Complainant has been trading since 1990 in the provision of clogs, boots, sandals, flats, and sneakers under the DANSKO name and trademark, which it offers for sale including online at the website “www.dansko.com”.

The Complainant owns numerous trademark registrations for DANSKO and marks including DANSKO, including the following, details of which were annexed to the Complaint:

- United States Trademark Registration No. 3854991 for DANSKO in Class 25, registered on September 28, 2010;
- United States Trademark Registration No. 4229847 for DANSKO in Classes 3, 18, 25, and 35, registered on October 23, 2012; and
- United States Trademark Registration No. 3265194 for DANSKO in Class 25, registered on July 17, 2007.

The Respondent is an individual with an address in the United States. The disputed domain name was registered on March 27, 2024, and is in use for a website featuring the Complainant's DANSKO trademark prominently and purporting to offer DANSKO-branded shoes for sale at discounted prices. It is not clear from the website printouts annexed to the Complaint that the Respondent's website is not that of the Complainant or otherwise related to it. The pages are headed with the Complainant's logo and the statement, “Find the latest collection of exquisite footwear in Dansko stores or online.”

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 virtually identical to its DANSKO trademark in which the Complainant has registered rights. The descriptive and geographic terms in the disputed domain name do not avoid confusing similarity with the Complainant's mark, and indeed are likely to increase the risk of confusion because of their relevance to the Complainant's business.

The Complainant further argues that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant, and the Complainant has not authorized, licensed, or endorsed the Respondent's use of its DANSKO trademark in the disputed domain name. The Respondent is not commonly known by a name corresponding to the disputed domain name. The Complainant asserts that the Respondent's use of the disputed domain name for a website purporting to offer shoes for sale under the DANSKO trademark is not a bona fide offering of goods or services because the Respondent's use of DANSKO to offer shoes for sale through its website is an infringement of the Complainant's registered trademark rights and the Respondent is deliberately attempting to confuse consumers into believing that it is associated with the Complainant, when it is not.

Finally, the Complainant submits that the Respondent's registered and has used the disputed domain name in bad faith. The Complainant argues that the Respondent clearly had the Complainant in mind when it registered the disputed domain name, given the use on the website of the Complainant's DANSKO word and logo marks. The Complainant submits that the goods offered for sale on the Respondent's website are either unauthorised or counterfeit. The Complainant also argues that the Respondent's bad faith is evinced from its use of a privacy service to shield its identity. The Complainant also submits that the Respondent registered the disputed domain in order to "syphon the goodwill and reputation" from the Complainant and its DANSKO trademark for commercial gain and to profit from the resulting consumer confusion.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

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 trademark DANSKO 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 confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, "shoes" and "US", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the 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.

The Panel notes that the Respondent appears to have been using the disputed domain name in connection with a website offering footwear for sale under the Complainant's trademark, even using the Complainant's own logo. The website extracts annexed to the Complaint do not make it clear that the website is not in fact that of the Complainant, and the disputed domain name inherently carries an inference of affiliation with the Complainant, which sells shoes and is based in the United States. It seems very likely that Internet users will perceive it as an official website of the Complainant or in some way connected to or authorized by the Complainant.

The Complainant submits that the goods offered for sale through the Respondent's website are either unauthorized or counterfeit but are being presented as authentic DANSKO shoes of the Complainant. The Respondent has not sought to deny this. If this is the case, this would undermine any suggestion that the Respondent's use could be a bona fide commercial use.

Even if the footwear being offered through the Respondent's website were to be genuine DANSKO shoes of the Complainant, which the Respondent was re-selling, then following the principles outlined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), the use still would not have demonstrated a right or legitimate interest in the disputed domain name, since the Respondent's website does not accurately and prominently disclose the Respondent's relationship with the Complainant. [WIPO Overview 3.0](#), section 2.8.1.

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 has been using a domain name that is confusingly similar to the Complainant's DANSKO trademark and includes descriptive and geographical terms that strongly point to knowledge of the Complainant, which sells shoes and is active in the United States. The content of the Respondent's website, moreover, puts the Respondent's awareness of the Complainant and its DANSKO trademark beyond all doubt, since it uses the Complainant's own logo mark prominently throughout the site.

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 this case, the Panel is satisfied that the disputed domain name is inherently liable to mislead Internet users into believing that it denotes a website of the Complainant, when in fact it does not, and that the Respondent has intentionally used the disputed domain name to attract Internet users to its website by

creating a likelihood of confusion with the Complainant's DANSKO mark, with a view to commercial gain through the sale of products through its website (para 4(b)(iv) of 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 <danskoshoesus.com> be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: June 7, 2024