

ADMINISTRATIVE PANEL DECISION

Yamaha Corporation v. hieu trong
Case No. D2024-1532

1. The Parties

The Complainant is Yamaha Corporation, Japan, internally represented.

The Respondent is hieu trong, Cambodia.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 11, 2024. On April 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 12, 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 amendment to the Complaint on April 16, 2024.

The Center verified that the Complaint together with the amendment to 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 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2024. The Respondent sent informal email communications to the Center on April 14 and 15, 2024 and May 11, 2024. On May 10, 2024, the Center notified the Parties of the Commencement of Panel Appointment Process.

The Center appointed Pablo A. Palazzi 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 registered in Japan which manufactures and sells musical instruments.

The Complainant owns registrations comprising the trademark YAMAHA including the European Union Trademark Registration No. 000191387, in international classes 9, 15 and 28, with a registration date of October 15, 1998 and United States Trademark Registration No. 3,559,368, in international classes 3, 8, 9, 15 and 21, with a registration date of January 13, 2009.

The disputed domain name was registered on April 9, 2016, and it resolves to an online store in Vietnamese language, containing piano images and using the Complainant trademark.

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 confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

However, the Respondent sent an email stating "Hi wipo [...] I want to negotiate to resolve this matter amicably".

6. Discussion and Findings

Under paragraph 4(a) of the Policy, in order to prevail, a complainant must prove the following three elements for obtaining the cancellation or transfer of a domain name:

- (i) that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) that the respondent has no rights or legitimate interests in the domain name; and
- (iii) that the 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 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 “piano” may bear on assessment of the second and third elements, the Panel finds the addition of such term 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 disputed domain name reproduces the Complainant’s trademark in its entirety added by the term “piano” before the trademark, a term related to the Complainant products. In addition, the disputed domain name resolves to a website allegedly offering products bearing the Complainant’s mark without its authorization. The Panel finds that the disputed domain name carries a risk of implied affiliation.

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 Complainant’s YAMAHA trademark is known for musical instruments, in particular for pianos which are manufactured and commercialized worldwide by the Complainant. Considering the well-known character of the Complainant’s trademark YAMAHA (See *Yamaha Corporation v. Zhoulei*, WIPO Case No. [D2004-0126](#) and *Yamaha Corporation v. Ahmad Tbyb*, WIPO Case No. [D2023-4551](#)), the Respondent obviously had knowledge of it when registering the disputed domain name, particularly noting the use of the disputed domain name, and that it contains the term “piano” thus referring to goods which are manufactured and commercialized by the Complainant.

Furthermore, the Respondent has been using the disputed domain name for a website which prominently displays the YAMAHA trademark on the top of its homepage, promoting among others YAMAHA musical instruments, including pianos, which is a bad faith use of the disputed domain name as the Respondent is trying to attract Internet users for a commercial gain by creating a likelihood of confusion.

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 <pianoyamaha.com> be cancelled.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: May 29, 2024.