

ADMINISTRATIVE PANEL DECISION

Strawberry Milk Mob Apparel Ltd. v. Wid Haonaz, strawberrymilkmob,
and Harvey Ross, Luvtique
Case No. D2024-1836

1. The Parties

The Complainant is Strawberry Milk Mob Apparel Ltd., Canada, represented by Clark Wilson, Canada.

The Respondents are Wid Haonaz, strawberrymilkmob, and Harvey Ross, Luvtique, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain names <strawberrymilkmob.com>, <strawberrymiikmob.com>, <strawberrymiikmob.com>, <strawberrymillkmob.com>, <strawberrymilkmob.com> are registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 1, 2024. On May 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 3, 2024, the Registrar transmitted by email to the Center its verification response disclosing the registrants and contact information for the disputed domain names which differed from the named Respondents (Contact Privacy Inc. Customer 0170993355 and Contact Privacy Inc. Customer 0170970303) and contact information in the Complaint.

On May 7, 2024, the Complainant, sent an Amended Complaint to the Center that included the addition of another domain name to the Complaint. On May 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the additional disputed domain name. On May 8, 2024, the Registrar transmitted by email to the Center its verification response disclosing the registrant and contact information for the additional disputed domain name.

The Center sent an email communication to the Complainant on May 15, 2024, providing the registrants and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed a further amended Complaint on May 18, 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 Respondents of the Complaint, and the proceedings commenced on May 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 18, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on June 21, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on June 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 by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant was founded in 2019 and ever since operates an online store at its domain name “www.strawberrymilkmob.com”, where it sells clothing goods and swimwear to consumers worldwide, including in the United States and Canada (Annexes 4, 5, and 6 to the Amended Complaint).

The Respondents are reportedly located in the United States.

The disputed domain names were registered on the following dates:

<strawberrymilkmob.com> on April 23, 2024
<strawberryiikmob.com> on April 24, 2024
<strawberryiikmob.com> on April 24, 2024
<strawberrymilkmob.com> on April 21, 2024
<strawberymilkmob.com> on May 1, 2024

According to undisputed information provided by the Complainant in its Amended Complaint and supported by screenshots of the websites linked to the disputed domain names (Annex 7 to the Amended Complaint), the disputed domain names <strawberrymilkmob.com> and <strawberryiikmob.com> were used to redirect Internet users to one of the other disputed domain names, which were linked to websites virtually copying the Complainant’s official website, purportedly offering the Complainant’s goods for significantly discounted prices. When Internet users attempted to buy goods through these websites linked to the disputed domain names, they were directed to a payment portal hosted at a different site (Annex 9 to the Complaint). As shown by additional screenshots from social media, numerous consumers complained to the Complainant about being misled by the websites associated to the disputed domain names, indicating that they never received any ordered products even though paid in advance (Annex 8 to the Complaint).

At the date of the Decision, the disputed domain names were no longer linked to active websites.

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 names.

B. Respondents

The Respondents did not reply to the Complainant’s contentions.

6. Discussion and Findings

6.1. Consolidation of Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requested the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The registrants of disputed domain names did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) section 4.11.2.

In light of the criteria set out above, the Panel finds that the Complainant has provided evidence that all disputed domain names are under common control, mainly for the following reasons:

- the disputed domain names were all registered rather recently between end of April 2024 and beginning of May 2024, partly even on the same day;
- all disputed domain names are registered with the same Registrar;
- the disputed domain names previously resolved or at least redirected Internet users to a website purportedly offering for sale the Complainant's goods, with a look and feel virtually identical to the official website owned by the Complainant.

The Panel concludes that the Respondents are more likely than not somehow connected. Hence, the Panel accepts that all disputed domain names are under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different registrants of disputed domain names (referred to below as "the Respondent", whenever appropriate) in a single proceeding.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

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 names are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(a) of the Policy states that a complainant bears the burden of proving that all these requirements are fulfilled, even if a respondent has not substantively replied to the complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by a complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in a complaint as true. [WIPO Overview 3.0](#), section 4.3.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

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 3.0](#), section 1.7.

The Complainant has no registered trademark rights for STRAWBERRY MILK MOB.

However, the Panel finds the Complainant has established unregistered trademark in STRAWBERRY MILK MOB for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. The Complainant launched its online store at "www.strawberrymilkmob.com" in 2019, by using the sign STRAWBERRY MILK MOB for its offered goods. Also, the Complainant's company name ever since its foundation in 2019 comprises the sign STRAWBERRY MILK MOB in its entirety. The fact that the Respondent is shown to have been targeting the complainant's unregistered trademark, inter alia by copying the Complainant's official website, supports the Complainant's assertion that STRAWBERRY MILK MOB has achieved significance as a source identifier. This assessment is also supported by the fact that the term STRAWBERRY MILK MOB has no specific meaning in relation to the Complainant's goods, and hence, can be assessed as inherently distinctive.

The Panel further finds the Complainant's STRAWBERRY MILK MOB unregistered trademark is recognizable within the disputed domain names. As stated at section 1.9 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, misspellings do not prevent a finding of confusing similarity. In the present case, the Panel notes that all disputed domain names incorporate apparent misspellings of the Complainant's STRAWBERRY MILK MOB trademark by simply omitting, adding or replacing a letter, which in view of the Panel, still makes the Complainant's STRAWBERRY MILK MOB unregistered trademark recognizable within each of the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the STRAWBERRY MILK MOB 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 names. 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 names such as those enumerated in the Policy or otherwise.

The Panel particularly notes in line with previous findings of panels in similar cases that the use of the inherently confusingly similar disputed domain names for illegal activity, here claimed impersonation, and also other types of fraud like phishing, 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.

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 must have had the Complainant and its STRAWBERRY MILK MOB unregistered mark in mind when registering the disputed domain names. Noting the typosquatting nature of the disputed domain names, comprising Complainant's STRAWBERRY MILK MOB trademark by simply omitting, adding or replacing a letter, it is obvious to the Panel that the Respondent has deliberately chosen the disputed domain names to target and mislead third parties, most likely for impersonation and phishing purposes. Consequently, the Panel is convinced that the Respondent has registered the disputed domain names in bad faith.

Furthermore, the Panel finds that the Respondent is using the disputed domain names in bad faith as it is copying the Complainant's official website for impersonation and phishing purposes. As evidenced by the Complainant, numerous consumers reported to the Complainant of being misled by the websites associated to the disputed domain names, indicating that they never received any ordered products even though they paid in advance.

Panels have held that the use of domain names for illegal activity like impersonation, phishing, and/or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The fact that the disputed domain names no longer resolve to active websites does not prevent a finding of bad faith.

All in all, and having reviewed the record, the Panel has no doubt that the Respondent's registration and use of the disputed domain names 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 names <strawberrymilkmob.com>, <strawberrymiikmob.com>, <strawberrymiikmob.com>, <strawberrymillkmob.com>, and <strawberymlkmob.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: July 11, 2024