

ADMINISTRATIVE PANEL DECISION

PVH Corp. v. Stephen Pusateri
Case No. D2024-2231

1. The Parties

Complainant is PVH Corp., United States of America (“United States”), represented by Lipkus Law LLP, Canada.

Respondent is Stephen Pusateri, United States.

2. The Domain Name and Registrar

The disputed domain name <pvhcorporation.com> is registered with Global Domain Group LLC (“Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 30, 2024. On May 31, 2024, the Center transmitted by email to Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 2024, Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing contact information and other details of the registration.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (“Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on June 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 24, 2024. On June 4, 2024, after commencement of the proceedings, Complainant submitted a supplemental filing. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 25, 2024.

The Center appointed Debra J. Stanek as the sole panelist in this matter on July 2, 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

Complainant is a lifestyle and apparel company that was established in 1881. Complainant has used its PVH mark since 2013 and owns United States Registration No. 6,147,143, registered on September 8, 2020, for the mark PVH for business services related to apparel, cosmetics, jewelry and a variety of other products as well as management of retail stores featuring those products and the retail store services themselves.

Complainant owns and operates a website at the <pvh.com> domain name, which was created in 1997.

The disputed domain name was created on May 2, 2024. At the time the Complaint was filed, the disputed domain name resolved to a parked page that states: "Something amazing will be constructed here...."

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

In particular:

- Complainant's rights in the PVH mark and its <pvh.com> domain name long predate Respondent's registration of the disputed domain name;
- Respondent's use in connection with a parked page is not a bona fide offering of goods or services;
- Respondent was aware of Complainant's domain name and website because the Complainant's website was easily accessible when the disputed domain name was registered;
- Respondent had constructive knowledge of Complainant's trademark registrations;
- Respondent is not commonly known as "pvh";
- there is no plausible actual or contemplated active use of the disputed domain name that would not be illegitimate;
- Respondent is diverting Complainant's customers or potential customers seeking information about Complainant to a parked page; and,
- in the future, the disputed domain name can divert Internet users to a website that Respondent activates or be used to send malicious emails using the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

As noted above, after the commencement of the proceedings, Complainant sent an unsolicited supplemental submission to the Center. Neither the Rules nor the Supplemental Rules provide for filing any submission other than a complaint and response. The Panel is of the view that a supplemental submission is appropriate only in exceptional circumstances and that the party submitting (or seeking to submit) it must explain its relevance and the circumstances that prevented the information being provided in the complaint or

response, as applicable. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.6. Here, Complainant simply forwarded what it characterized as identified as "Amended UDRP/Supplementary Annexed Documents." Complainant did not identify or explain what had been amended or provide any circumstances, much less exceptional ones, which made the submission appropriate. The Panel did not consider this submission for the purposes of this decision.

To prevail under the Policy a complainant must prove, as to the domain name at issue, that: (a) it is identical or confusingly similar to a mark in which the complainant has rights, (b) respondent has no rights or legitimate interests in respect to it, and (c) it has been registered and is being used in bad faith. Policy, paragraph 4(a). A respondent's failure to respond does not automatically result in a finding for the complainant; the complainant continues to have the burden of establishing each element. See [WIPO Overview 3.0](#), section 4.3. The Panel may, however, draw appropriate inferences from the default. See Rules, paragraph 14(b).

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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.

Although the addition of the term "corporation," may bear on assessment of the second and third elements, the Panel finds the addition here 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 entirety of the mark is reproduced and 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 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 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.

The Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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 finds the second element of the Policy has been established.

C. Registered and Used 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 for purposes of paragraph 4(a)(iii) of the Policy, 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.

Other panels have found that the non-use of a domain name, including a "coming soon" page, does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. The Panel finds that the passive holding of the disputed domain name does not prevent such a finding here, taking into account the distinctiveness of Complainant's mark, Respondent's inclusion of that mark with a dictionary term that appears to reference Complainant's corporate name, Complainant's use of the PVH mark and <pvh.com> website long predating creation of the disputed domain name, Respondent's failure to respond, and the implausibility of any good faith use to which the disputed domain name could be put.

The Panel finds the third element of the Policy has been established.

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 <pvhcorporation.com> be transferred to Complainant.

/Debra J. Stanek/

Debra J. Stanek

Sole Panelist

Date: July 13, 2024