

ADMINISTRATIVE PANEL DECISION

Rack Attack USA Inc. v. FreedmanViola

Case No. D2024-2778

1. The Parties

Complainant is Rack Attack USA Inc., United States of America (“U.S.” or “United States”), represented by Boyle Fredrickson, S.C., United States.

Respondent is FreedmanViola, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 8, 2024. On July 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 10, 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 (REDACTED FOR PRIVACY, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to Complainant on July 15, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on July 19, 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 Respondent of the Complaint, and the proceedings commenced on July 29, 2024. In accordance with the Rules, paragraph 5, the due date for the Response was August 18, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 31, 2024.

The Center appointed John C. McElwaine as the sole panelist in this matter on September 12, 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 U.S. company engaged in the business of providing retail store and online catalog services in the field of racks. Complainant owns U.S. trademark registration No. 2405418 for RACK ATTACK, registered on November 21, 2000.

The Domain Name was registered on March 28, 2024, and at the time of preparation of the Complaint resolved to an online retail website purporting to be Complainant and selling products in the field of racks.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

As background, Complainant asserts that it has been using the RACK ATTACK mark in commerce since at least May 11, 1999, establishing a long-standing presence in the industry. Complainant points out that it owns U.S. trademark registration No. 2405418 for RACK ATTACK and has operated a website at the domain name <rackattack.com> since at least October 3, 1999. Collectively, Complainant's registered and common law trademark rights are referred to as the "RACK ATTACK Mark."

With respect to the first element of the Policy, Complainant asserts that the Domain Name is identical or confusingly similar to its RACK ATTACK trademark. Complainant contends that the Domain Name incorporates its RACK ATTACK mark in its entirety, with the addition of the term "shop", which does not prevent a finding of confusing similarity.

With respect to the second element of the Policy, Complainant argues that Respondent has no rights or legitimate interests in the Domain Name. Complainant further states that it has not licensed or otherwise authorized Respondent to use the RACK ATTACK mark. Complainant alleges that Respondent is using the Domain Name for a website that offers competing products and services, which does not constitute a bona fide offering of goods or services or legitimate noncommercial or fair use.

With respect to the third element of the Policy, Complainant contends that the Domain Name was registered and is being used in bad faith. Complainant points to Respondent's use of the Domain Name for a website that competes with Complainant's business and imitates its branding, which Complainant argues intentionally attempts to attract Internet users for commercial gain by creating a likelihood of confusion with Complainant's mark.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); and *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel's findings on each of the above cited elements are as follows.

A. Identical or Confusingly Similar

The Panel finds that Complainant has established rights in the RACK ATTACK Mark through its U.S. trademark registration and long-standing use in commerce.

As stated in section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), ownership of a trademark registration is sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy.

The Domain Name incorporates Complainant's RACK ATTACK Mark in its entirety, with the addition of the term "shop". As noted in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element. The Panel finds that the RACK ATTACK trademark is clearly recognizable within the Domain Name.

Therefore, the Panel concludes that the Domain Name is confusingly similar to Complainant's RACK ATTACK Mark in which Complainant has rights, satisfying the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make a prima facie case that Respondent lacks rights or legitimate interests in the Domain Names, after which the burden of production shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests. See section 2.1 of the [WIPO Overview 3.0](#).

Here, Complainant has stated that it has not licensed or otherwise authorized Respondent to use its RACK ATTACK Mark or to register domain names incorporating the mark. There is no evidence that Respondent has been commonly known by the Domain Name or that Respondent has acquired any trademark rights in the term "rack attack" or "rack attack shop".

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Names. 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 Domain Name such as those enumerated in the Policy¹ or otherwise.

Moreover, Respondent cannot claim that its operation of the website at the Domain Name provides legitimate interests because the Panel finds that the Domain Name was likely registered and used to engage in impersonation of Complainant's online retail website, which is not a bona fide offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 (use of a domain name for activity such as impersonation/passing off would not confer rights or legitimate interests on a respondent; this is true even though the term "rack" is disclaimed in the relevant mark.).

Lastly, Respondent's use of the Domain Name is not noncommercial or fair use under paragraph 4(c)(iii) of the Policy, given that Respondent was selling competing products from an online retail website under an identical trademark. Such activity does not amount to a fan site, criticism, or other activity that may be considered noncommercial or fair use.

Accordingly, the Panel finds that Complainant has made a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name, which Respondent has not rebutted. The Panel concludes that Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can be found where a respondent "knew or should have known" of a complainant's trademark rights and nevertheless registered a domain name in which it had no rights or legitimate interests. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). As detailed above, Respondent registered the Domain Name, which is confusingly similar to Complainant's RACK ATTACK Mark, developed a competing website and used a stylization of the RACK ATTACK Mark identical to that used by Complainant. There is no explanation for Respondent to have chosen to register the Domain Name with such use of a mimicked stylized logo other than to intentionally trade off the goodwill and reputation of Complainant's trademark or otherwise create a false association with Complainant. With no response from Respondent, this claim is undisputed.

As discussed herein, Respondent registered the Domain Name and linked it to a website using Complainant's RACK ATTACK Mark and engaging in online retail sales of similar products to those sold by Complainant. These actions amount to bad faith use of the Domain Name by Respondent. See *Identigene, Inc. v. Genetest Labs*, WIPO Case No. [D2000-1100](#) (finding bad faith where the respondent's use of the domain name at issue to resolve to a website where similar services are offered to Internet users is likely to confuse the user into believing that the complainant is the source of or is sponsoring the services offered at the site); *MathForum.com, LLC v. Weiguang Huang*, WIPO Case No. [D2000-0743](#) (finding bad faith under paragraph 4(b)(iv) of the Policy where the respondent registered a domain name confusingly similar to the complainant's mark and the domain name was used to host a commercial website that offered similar services to those offered by the complainant under its mark).

As detailed above, the Panel finds on the record before it that Respondent's intention in registering the Domain Name was to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant's RACK ATTACK Mark as to the source, sponsorship, affiliation, or

¹ The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which a respondent could demonstrate rights or legitimate interests in a contested domain name: "(i) before any notice to you of the dispute, your 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; or (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

endorsement of its website or location or of a product or service on its website or location. Thus, the Panel holds that Complainant has met its burden of providing sufficient evidence that Respondent registered and is using the Domain Name in bad faith under paragraph 4(b)(iv) 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 Domain Name <rackattackshop.com> be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: September 26, 2024