

## **ADMINISTRATIVE PANEL DECISION**

Yamaha Corporation v. Domain Administrator, Sugarcane Internet Nigeria Limited

Case No. D2024-2918

### **1. The Parties**

The Complainant is Yamaha Corporation, Japan, internally represented.

The Respondent is Domain Administrator, Sugarcane Internet Nigeria Limited, Nigeria.

### **2. The Domain Name and Registrar**

The disputed domain name <yamahacommercialaudiosystems.com> is registered with Sav.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 17, 2024. On July 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Sav.com, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 22, 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 July 23, 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 July 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 16, 2024.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on September 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**

The Complainant is a company registered in Japan, established in 1897, which manufactures and sells musical instruments and audio equipment. In 2024, the Complainant's YAMAHA brand was ranked 26th by Interbrand in a table of Best Japan Brands, with a brand value estimated at USD 2.285 billion.

The Complainant owns a registration comprising the trademark YAMAHA in the United States of America, Trademark Registration No. 3,559,368, in international classes 3, 8, 9, 15, and 21, with a registration date of January 13, 2009, hereinafter referred to as the "Trademark".

The disputed domain name was registered on March 1, 2010. At the time of filing the Complaint, the disputed domain name redirected to a website which is reported as a phishing site by a security vendor. It currently resolves to a website providing various pay-per-click ("PPC") commercial advertising links for commercial and professional audio systems, equipment, and audio equipment parts.

#### **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 to have trademark rights over YAMAHA and is of the opinion that the disputed domain name is identical or confusingly similar to its Trademark.

The Complainant also alleges that it has no relationship with the Respondent who is not known under the name "Yamaha" and who has no rights over the Trademark YAMAHA. Additionally, the Respondent was not authorized by the Complainant to use its YAMAHA trademark. Under the circumstances, the Complainant is of the opinion that the Respondent does not have rights or legitimate interests over the disputed domain name.

The Complainant contends that its YAMAHA Trademark is well-known worldwide, and the Respondent could have found through a simple Internet search that it belongs to the Complainant. It is unlikely that the Respondent has registered the disputed domain name without knowing the rights to the Trademark of the Complainant.

The Complainant manufactures and sells audio equipment and promotes "Professional Audio" as a product category. The disputed domain name contains the term "commercial audio systems" referring to audio equipment which are manufactured and commercialized by the Complainant. Thus, the disputed domain name is presumed to be intended to mislead and confuse consumers.

The site where the disputed domain name redirected to has no relation to the Complainant or the products and services with the Trademark. The site has been rated as a phishing site by a security vendor because it reconnects to a site that is suspected to be a phishing site.

The Complainant submits that the Respondent is abusing the reputation and name value of the Trademark by intending to direct Internet users to a website operated by the Respondent.

The Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following three elements in order to succeed in its Complaint:

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

The burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.3.

### **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 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 Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, "commercial audio systems" 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.

Further, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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.

Section 3.1.4 of the [WIPO Overview 3.0](#) states that "the mere registration of a domain name that is identical or confusingly similar (particularly domain name comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith".

In the present case, the Panel notes that the Complainant's YAMAHA Trademark is a famous and worldwide known trademark for musical instruments, inter alia for professional audio equipment, which are manufactured and commercialized worldwide by the Complainant. Considering the notoriety of the Complainant's Trademark, the Respondent obviously had knowledge of it when registering the disputed domain name, particularly noting the disputed domain name contains the terms "commercial audio systems" thus referring to goods which are manufactured and commercialized by the Complainant.

At the time of filing the Complaint, the disputed domain name redirected to a website which is reported as a phishing site by a security vendor. Panels have held that the use of a domain name for illegal activity here, claimed phishing, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The disputed domain name is currently being used for competing PPC links. Use for PPC links indicates bad faith being disruptive of the Complainant's business and diverting and confusing Internet users for commercial gain. In this case, the PPC links include those relating to commercial and professional audio systems, equipment and audio equipment parts making it more likely than not that the Respondent is aware of the Complainant and its rights, business, and products.

The circumstances that the Respondent did not respond to the Complaint, supports a finding of registration and use in bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name 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 name <yamahacommercialaudiosystems.com> be transferred to the Complainant.

*/Richard C.K. van Oerle/*

**Richard C.K. van Oerle**

Sole Panelist

Date: September 16, 2024