

ADMINISTRATIVE PANEL DECISION

Surya Rugs, Inc. v. DODSONCLAYTON

Case No. D2024-3158

1. The Parties

Complainant is Surya Rugs, Inc., United States of America (“US”), represented by The Seigel Law Firm LLC, US.

Respondent is DODSONCLAYTON, US.

2. The Domain Name and Registrar

The disputed domain name <suryabrasildiscount.shop> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2024. On August 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 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)” and contact information in the Complaint. The Center sent an email communication to Complainant on August 5, 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 August 5, 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 August 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 27, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 28, 2024.

The Center appointed Phillip V. Marano as the sole panelist in this matter on September 4, 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 home furnishing company that produces rugs and other textile products. Complainant offers its goods through its official <surya.com> domain name and website. Complainant owns a valid and subsisting registration for the SURYA trademark in the US (Reg. No. 4,327,716), registered on April 30, 2013, with the earliest use dating back to December 31, 1995. According to Complainant's trademark registration, the translation of "surya" from Indian to English is "sun".

Respondent registered the disputed domain name on July 19, 2024. At the time this Complaint was filed, the disputed domain name resolves to a website titled "SuryaBrasilDiscounts Best Selling" that appears to offer "surya rugs" and assorted hair care and henna beauty products, at deeply discounted rates of thirty percent (30%) off. Respondent's website also contains policies, terms, and conditions that make inconsistent reference to both "suryabrasildiscounts.shop" and "shopsatshops." Respondent's website offers a physical contact address in "Marylebone, London" which differs from the "United States" physical address for Respondent disclosed by the Registrar.

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.

Notably, Complainant asserts ownership of the SURYA trademark and has adduced evidence of trademark registration in the US, with earliest use dating back to December 31, 1995. The disputed domain name is confusingly similar to Complainant's SURYA trademark, according to Complainant, because it comprises the entire SURYA mark plus the descriptive wording "brasil" and "discount."

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: The lack of any demonstrable preparations for Respondent to use the disputed domain name in connection with a bona fide offering of goods or services; the lack of any evidence that Respondent is known by the disputed domain name; and the lack of any demonstrable non-commercial or fair use by Respondent.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: Respondent's use of the disputed domain name in connection with a website advertising rugs under Complainant's SURYA trademark with the intention of redirecting Internet traffic away from Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is prima facie obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as prima facie evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the SURYA trademark has been registered in the US with earliest use dating back to 1995. Thus, the Panel finds that Complainant's rights in the SURYA trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's SURYA trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant's SURYA trademark because the entirety of the trademark is contained within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar..."). In regard to generic Top-Level Domains ("gTLDs"), such as ".shop" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11. The combination with the terms "brasil" and "discount" does not prevent a finding of confusing similarity between Complainant's SURYA trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not prevent a finding of confusing similarity under the first element").

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1. As a threshold matter, it is evident from the record that Respondent, identified by the Whois data for the disputed domain name as "DODSONCLAYTON", is not commonly known by the disputed domain name or Complainant's SURYA trademark.

Complainant has not addressed whether Respondent is authorized to offer Complainant's SURYA branded products, whether Respondent is a reseller, distributor, or service provider of Complainant's products and whether Respondent truly offers any goods at all through its website, or whether Respondent's website is engaged in some form of illegal activity such as phishing or fraud. Resellers, distributors, and service providers using a domain name containing a complainant's trademark (usually in conjunction with descriptive terms like a geographic location) to undertake sales related to that complainant's products may be making a bona fide offering of goods and services and thus may have a legitimate interest in the disputed domain name. [WIPO Overview 3.0](#), section 2.8.1. Panels apply the fact specific "Ok Data Test" to determine whether rights or legitimate interests in the disputed domain name are present in cases where all of the following elements are met:

- i. Respondent must actually offer the goods or services at issue;
- ii. Respondent must use the site to sell only the trademarked goods or services;
- iii. The site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- iv. Respondent must not try to "corner the market" in domain names that reflect the trademark.

See *Ok Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

In this Complaint, the record does not contain any evidence (such as a test purchase) to confirm whether Respondent actually sells authentic SURYA branded products or is otherwise engaged in some form of illegal activity. However, it is clear that Respondent claims to sell numerous third-party products (including hair care and beauty products) on its website beyond just SURYA rugs. In addition, Respondent's website does not appear to contain any disclaimers regarding Complainant or its SURYA trademark rights. And as discussed below with respect to the third element, Respondent's website contains further indicators of illegitimacy.

In view of the foregoing, the Panel is satisfied that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered, or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

Circumstances in this case corroborate Respondent's awareness of Complainant and Complainant's SURYA trademark, including Respondent's replete website use of Complainant's SURYA trademark to describe a multitude of "surya rugs" ostensibly offered for sale on Respondent's website.

Furthermore, limited independent Panel research,¹ simply in view of Respondent's website, yielded indicia to suggest that its putative offers to sell "surya rugs" are most likely illegitimate. Specifically, Respondent's offers appear disproportionately, by thirty percent (30%), below their typical market value, and Respondent has masked its identity to avoid being contactable. See [WIPO Overview 3.0](#), section 2.13.2. In addition, Respondent's website makes inconsistent reference to itself as both "suryabrasildiscounts.shop" and "shopsatshops." Respondent's website also offers a physical contact address in "Marylebone, London" which differs from the "United States" physical address disclosed by the Registrar for Respondent. Finally, Respondent's failure to answer this Complaint or take any part in the present proceedings, supports a finding of bad faith. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Ultimately, Respondent's use of a domain name incorporating Complainant's trademark to redirect Internet users to Respondent's website, where goods or services are ostensibly offered in competition with Complainant, is strong evidence of bad faith under paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.4 ("Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: ... seeking to cause confusion for respondent's commercial benefit, even if unsuccessful ... the lack of a respondent's own rights to or legitimate interests in a domain name [or] redirecting the domain name to a different respondent-owned website[, even where such website contains a disclaimer]..."). Here, the disputed domain name misappropriates Complainant's SURYA trademark and resolves to Respondent's website that contains putative offers to sell "surya rugs" and various beauty products at deeply discounted prices. Accordingly, the Panel finds that use of the disputed domain name will divert potential customers from Complainant's business to the website under the disputed domain name by attracting Internet users who mistakenly believe that the disputed domain name is affiliated with Complainant, and which may further mistakenly believe that the products offered on this website are authentic products offered by Complainant, or by an entity affiliated to Complainant.

In view of the foregoing, the Panel concludes that 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 <suryabrasildiscount.shop> be transferred to the Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: September 24, 2024

¹ A panel may undertake limited factual research into matters of public record where it considers such information useful to assessing the case merits and researching a decision. This includes visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name, consulting historical resources like the Internet Archive, reviewing dictionaries, encyclopedias, or accessing trademark registration or other governmental databases. [WIPO Overview 3.0](#), Section 4.8.