

ADMINISTRATIVE PANEL DECISION

Jay At Play Int'l. Hong Kong Limited d/b/a Jay At Play v. ABDELALI AIT
OUAHMAN

Case No. D2024-3176

1. The Parties

The Complainant is Jay At Play Int'l. Hong Kong Limited d/b/a Jay At Play, Hong Kong, China, represented by The Plus IP Firm, United States of America.

The Respondent is ABDELALI AIT OUAHMAN, United States of America (United States).

2. The Domain Names and Registrar

The disputed domain names <happynapper.me> and <happynappershop.com> are registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 1, 2024. On August 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 3, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (NORTRADE LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 5, 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 amended Complaint on the same day.

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 Respondent of the Complaint, and the proceedings commenced on August 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 26, 2024. The Response was filed with the Center on August 18, 2024. The Complainant sent an email communication to the Center on August 19, 2024, enquiring about the inclusion of another domain name in the Complaint. The Complainant then submitted a supplemental filing

on August 27, 2024. The Center commenced panel appointment on the same day.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on September 11, 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.

Amongst other things, the Complainant's supplemental filing requested the consolidation of a third domain name <sleepingbagnappers.com> to the Complaint in addition to responding to various claims made in the Response.

Inquiries made by the Center with the Registrar established that the third domain name was no longer registered by anyone. Accordingly, the Panel issued Administrative Panel Order No. 1 requesting the Complainant to confirm if it would withdraw its request to consolidate the domain name <sleepingbagnappers.com> and providing the Respondent with the opportunity by October 12, 2024, to address the Complainant's supplemental filing (including any objections to its admissibility).

In the event, the Complainant confirmed it no longer sought consolidation of the third domain name.

The Respondent did not take up the opportunity to make any submissions in relation to the Complainant's unsolicited supplemental filing.

4. Factual Background

The Complainant manufactures and sells plush toys, pillows, and sleeping bags under the trademark HAPPY NAPPERS. It appears to do so in at least the United States, the European Union and the United Kingdom. Amongst other things, it also offers its products for sale under its trademark from a website at "www.happynappers.com".

According to the Complaint, the Complainant has been offering its products for sale in the United States under its trademark since June 2010. It is not clear from the Complaint when the Complainant claims to have commenced operations outside the United States.

However, the Complaint includes evidence that the Complainant owns a number of registered trademarks for HAPPY NAPPERS including:

- (a) United States Registered Trademark No 3,998,335 which was registered in the Principal Register on July 19, 2011 in respect of plush toy animals and stuffed toy figures and stuffed animals in International Class 28. The trademark application was filed on July 2, 2010;
- (b) There are corresponding registrations in at least both the European Union and the United Kingdom which have been registered with effect from their filing date on December 10, 2010: respectively, European Union Trademark No 009261173 and UK009261173;
- (c) United States Registered Trademark No 6,102,208 which was registered in the Principal Register on July 14, 2020 in respect of pillows and pillows convertible into sleeping bags in International Class 20 and sleeping bags in International Class 24. The application to register this trademark was filed on February 4, 2020 claiming a first use in commerce on December 1, 2019;
- (d) There are also corresponding registrations in a number of other countries. For present purposes it is sufficient to note United Kingdom Registered Trademark No UK00801524290 which was filed on March 6, 2020 and entered on the Register on September 1, 2020.

According to the Whois reports, both disputed domain names were registered on March 2, 2022.

When the Complaint was filed both resolved to websites appearing to offer for sale children's or novelty sleeping bags under the HAPPY NAPPERS "logo":



Although providing an address in the United States when he registered the disputed domain names, the Respondent is the Chief Executive Officer of Happy Napper Ltd which is a company incorporated in the United Kingdom on June 9, 2023.

The Complaint includes evidence that at least one consumer has complained to the Better Business Bureau in Florida in the United States about buying and paying for a product through the Respondent's website but never receiving the product, a refund, or any response.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

In the exercise of the discretion under paragraph 10 of the Rules, the Panel will admit the Complainant's supplemental filing – apart from the issue of consolidating the third domain name (now withdrawn). Apart from that issue, the unsolicited filing essentially addresses defences raised by the Respondent which, if not addressed, would have left the Panel with a false impression of the facts.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has proven ownership of numerous registered trademarks for HAPPY NAPPERS.

In undertaking the comparison between the disputed domain names and the Complainant's trademark, it is permissible in the present circumstances to disregard the generic Top-Level Domain (gTLD) ".com" and the country code Top-Level domain (ccTLD) ".me" for Montenegro, of the disputed domain names as a functional

aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the “.me” ccTLD, therefore, the first disputed domain name is identical to the Complainant’s trademark save for the trivial omissions of the “s” (making the term a plural) and the space separating the two words “happy” and “napper” (noting a common convention of domain naming to omit spaces).

Disregarding the “.com” gTLD, the second disputed domain name is identical to the Complainant’s trademark save for the addition of the term “shop” and omission of the spaces separating the words.

The Respondent contends that “happy napper” are two generic words over which there cannot be trademark rights. That argument (even assuming it to be true) is misplaced in this context. Comparing the disputed domain names to the Complainant’s trademark simply requires a visual and aural comparison of the disputed domain names to the proven trademark. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy and are better addressed under the Policy in those contexts. See e.g., [WIPO Overview 3.0](#), section 1.7.

Accordingly, the Panel finds that the Complainant has established that both disputed domain names are at the very least confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied in respect of both disputed domain names.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain names.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

While 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 often impossible 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. 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.

In the present case, it is not in dispute that the Respondent registered the disputed domain names well after the Complainant began using its trademark and also well after it registered the trademark. Nor is it in dispute that the Respondent is not licensed by or otherwise affiliated with the Complainant.

The Respondent, however, contends that he has rights to use the disputed domain names because they are comprised of generic words. In addition the Respondent contends that the Complainant does not have rights in "Happy Napper" as a trademark in the United Kingdom where the Respondent says he is based and uses the disputed domain name. According to the Respondent, he searched the United Kingdom and European Union trademark databases before he registered the disputed domain names and no trademarks were disclosed. The Respondent also says he conducted a thorough "Google" search and found nothing related to the Complainant.

The Panel accepts that "happy" and "napper" are ordinary words. While in combination they may have some suggestive application in relation to the Parties' goods, the Panel does not consider that combination is directly descriptive of those goods. That is evidenced by the fact of registration in the Principal Register in the United States and the United Kingdom Register. Bearing that in mind, generally speaking the appropriate venue to challenge the validity of those registrations would be under the relevant jurisdiction's trademark law.

In addition, the Respondent has not provided evidence of the nature of the searches that he undertook. The results he claims he found, however, are in stark contrast to the fact of registration in at least the United Kingdom some two years before the Respondent registered the disputed domain names.

It would appear therefore that the use of the disputed domain names in the United Kingdom as claimed by the Respondent in the manner the Respondent was using them before the Complainant was filed would infringe the Complainant's rights there.

The Panel notes that the Respondent appears to claim derivation of the disputed domain names from the name of his company, Happy Napper Ltd. That name was registered more than a year after the Respondent registered the disputed domain names. So it cannot by itself found a defence under paragraph 4(c)(ii) of the Policy. In any event, it would be unlikely by itself to provide a defence to trademark infringement. Certainly, very much more evidence would be required to support such a defence under the Policy than the Respondent has provided in this case.

These matters, taken together, are sufficient to establish a prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not successfully rebutted that prima facie case. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

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.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain names have been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Group One Holdings Pte Ltd v. Steven Hafto*, WIPO Case No. [D2017-0183](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

As noted above, the Respondent denies that he had any knowledge of the Complainant and its trademark

when registering the disputed domain names.

While the Respondent has not provided details of the trademark searches, or Google searches, he says he carried out before registering the disputed domain names, it is very difficult to accept that at the very least the trademark searches would not have disclosed the Complainant's registrations in the United Kingdom – which are registered for the very goods the Respondent's websites appeared to be offering for sale.

In addition, the Panel notes that the stylised creature appearing in the Respondent's logo set out above appears to be almost identical to the Complainant's "White Unicorn" product. Other "creatures" offered for sale on the Respondent's websites are at the very least very similar in style to the Complainant's products.

Given these circumstances, the Panel is not prepared to accept the Respondent's denial of knowledge of the Complainant and its trademark.

The Panel infers from the manner of use of the disputed domain names and the arguments made in the Response that the Respondent registered both disputed domain names to use them in connection with a business which appeared to be offering for sale products of the kind offered by the Complainant.

The Panel considers, therefore, it is very likely that the Respondent did so knowing about the Complainant and its trademark and to take advantage of the close correspondence of the disputed domain names to the Complainant's trademark and get-up. Contrary to the Respondent's contention, therefore, the Panel finds that the Complainant has established the circumstances specified in paragraph 4(b)(iv):

"(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

In any event, the Respondent's conduct qualifies as registration in bad faith under the Policy and the subsequent use trading on the Complainant's trademark is use in bad faith under the Policy.

Accordingly, the Complainant has established all three requirements under the Policy.

D. Reverse Domain Name Hijacking

In light of these findings, there is no occasion for a finding of reverse domain name hijacking as requested by the Respondent.

6. 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 <happynapper.me> and <happynappershop.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: October 24, 2024