

ADMINISTRATIVE PANEL DECISION

CTM Management S.p.z.o.o v. Jesse James
Case No. D2024-3437

1. The Parties

The Complainant is CTM Management S.p.z.o.o, Poland, represented by FPS Partnerschaftsgesellschaft mbBH & Co. KG, Germany.

The Respondent is Jesse James, United States of America.

2. The Domain Name and Registrar

The disputed domain name <creamdeluxesale.com> (the “Disputed Domain Name”) is registered with Nicenic International Group Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2024. On August 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 23, 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 FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 26, 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 August 27, 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 August 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 19, 2024.

The Center appointed Michael D. Cover as the sole panelist in this matter on September 26, 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 the proprietor of the trademark CREAM DELUXE, which is registered in the European Union (Community Trademark) as follows:

No. 018578234 registered on January 27, 2022, in Classes 1 and 6 ;

No. 018578228 registered on January 29, 2022, in Classes 1 and 6.

The Complainant is also the proprietor of International Trademark No. 1700880 CREAM DELUXE registered on November 10, 2022, designating Organisation Africaine de la Propriété Intellectuelle (OAPI), Cabo Verde, Canada, Egypt, Liberia, Sierra Leone, Türkiye, the United Kingdom, Gambia (pending), Ghana (pending), United Arab Emirates (pending) and Norway (pending), also for goods in Classes 1 and 6.

The Complainant uses its CREAM DELUXE trademark in several countries for canisters of nitrous oxide, intended for use in professional kitchens, in particular to make whipped cream and cocktails, amongst other things. The Complainant operates a website at “www.cream-deluxe.com”.

The Disputed Domain Name was registered on October 17, 2023, and resolves to a website which offers nitrous oxide products bearing the Complainant’s CREAM DELUXE trademark, with a getup identical to that of the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for the cancellation of the Disputed Domain Name.

Identical or Confusingly Similar

Notably, the Complainant contends that the Disputed Domain Name infringes upon the Complainant’s trademark rights in its trademark CREAM DELUXE. The Complainant notes that the Disputed Domain Name fully comprises the Complainant’s CREAM DELUXE trademark and simply combines it with the descriptive and therefore non-distinctive word “sale”, indicating, says the Complainant, that the website in question (to which the Disputed Domain Name resolves) offers CREAM DELUXE branded goods for sale.

The Complainant submits that its CREAM DELUXE trademark is therefore recognizable within the Disputed Domain Name, noting that the addition of a descriptive term does not prevent similarity of the designations, citing the Decision , *Hoffmann-La Roche Inc v. Wei Chun Hsia*, WIPO Case No. [D2008-0923](#).

Rights or Legitimate Interests

The Complainant submits that it can be ruled out that the Respondent has rights or legitimate interests in the Disputed Domain Name and that the Respondent does not hold earlier rights in the designation CREAM DELUXE, which is registered for and associated with the Complainant exclusively.

The Complainant also submits that the word “sale” in the Disputed Domain Name shows that the Respondent does not intend a legitimate noncommercial use of the Disputed Domain Name but pursues (its own) business interests. The Complainant continues that, not only does the Disputed Domain Name as such infringe upon the Complainant’s rights in relation to nitrous oxide products. The Respondent continues that the Respondent is offering counterfeit CREAM DELUXE on the website to which the Disputed Domain Name resolves. The Complainant notes that the advertised products look like those of the Complainant, that is that they are canisters of nitrous oxide in the same size and colour as the Complainant’s products. The Complainant submits that the entire getup of the products is identical, including the protected stylized logo. The Complainant states that these goods have not been obtained from the Complainant or its licensees and authorized distributors and submits comparison screenshots of the two websites as Annex 5 to the Complaint.

The Complainant concludes that the Respondent’s website is designed to mislead consumers who wish to purchase the Complainant’s products.

Registered and being Used in Bad Faith

The Complainant submits that the Disputed Domain Name was registered and is being used in bad faith.

The Complainant notes that the Disputed Domain Name was registered on October 17, 2023, when the Complainant’s trademark rights already set out were already in force.

The Complainant submits that, by using the Disputed Domain Name, the Respondent intentionally attempted to attract for commercial gain Internet users to the Respondent’s website, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website.

The Complainant then submits that the Respondent’s bad faith is obvious from the contents of the website to which the Disputed Domain Name resolves, in that it offers counterfeit goods looking identical to the original products (of the Complainant). The Complainant also states that, without the Complainant’s consent, the Respondent has replicated pictures and trademarks which belong to the Complainant, trying to divert internet traffic from the Complainant’s site to that of the Respondent.

The Complainant also states that it has been informed that customers trying to buy CREAM DELUXE products at what the Complainant calls the Respondent’s web shop have never received their orders and that the postal address on the website belongs to a nursing agency, as demonstrated by Annex 6 to the Complaint. The Complainant submits that, as the Respondent’s customers believe that that they have been trading with the manufacturer of the original CREAM DELUXE products, as is suggested by the Disputed Domain Name, the customers would associate this bad experience with the trademark CREAM DELUXE, which constitutes a significant disruption and harm to the Complainant’s business.

The Complainant requests that the Panel decide that the Disputed Domain Name be cancelled.

B. Respondent

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

6. Discussion and Findings

The Complainant must establish on the balance of probabilities that the Disputed Domain Name is identical or confusingly similar to trademark or service mark in which the Complainant has rights; that the Respondent has no rights or legitimate interests in the Disputed Domain Name; and that the Disputed Domain Name has been registered and is being used in bad faith.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[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, showing rights in its CREAM DELUXE trademark.

The entirety of the Complainant's CREAM DELUXE trademark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the Complainant's CREAM DELUXE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, "sale" may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

It is also well-established in UDRP jurisprudence to ignore the applicable gTLD when it does not form part of the relevant trademark for comparison purposes. The addition of the gTLD, in this case, ".com" is a standing requirement and is to be disregarded when considering confusing similarity.

The Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark CREAM DELUXE, in which it has established registered rights, and that 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 disputed 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.

Panels have held that the use of a disputed domain name for impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's CREAM DELUXE trademark and to disrupt the business of a competitor, the Complainant.

Panels have held that the use of a disputed domain name for impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. 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 <creamdeluxesale.com> be cancelled.

/Michael D. Cover/

Michael D. Cover

Sole Panelist

Date: October 8, 2024