

ADMINISTRATIVE PANEL DECISION

Vix Swimwear, Inc. v. anna brunson

Case No. D2024-3769

1. The Parties

The Complainant is Vix Swimwear, Inc., United States of America (“United States”), represented by Montaury Pimenta, Machado & Vieira de Mello, Brazil.

The Respondent is anna brunson, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 16, 2024. On September 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 18, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 19, 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 September 20, 2024.

The Center verified that the Complaint together with 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 September 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 17, 2024.

The Center appointed Nicolas Ulmer as the sole panelist in this matter on October 25, 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 corporation in the United States which holds a number of trademarks, including the three following:

1. United States Registration No. 4510284 for VIX PAULA HERMANNY, granted April 8, 2014 (Class 18 and 25);
2. Brazil trademark No. 830235795 for VIX PAULA HERMANNY, granted November 5, 2019 (Class 25); and
3. Brazil trademark No. 825023661 for VIX & logo, granted August 22, 2017 (Class 25).

VIX appears to be a corporate and brand name, while PAULA HERMANNY refers to a Brazilian designer of swimwear and other apparel who has signed or inspired the Complainant's collection. The Complainant is in the swimwear industry and is well-known for its bikinis. The Complaint reports, and documents that the Complainant has an average yearly production of some 600,000 bikinis, and that many of these bikini's have been featured in style publications and/or worn by celebrities.

The disputed domain name was registered on April 30, 2024.

Little is known of the Respondent, who is apparently an individual residing in the United States, and whose identity was initially hidden behind a privacy screen.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under paragraph 4(a) of the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its trademarks and domain names, and that the Respondent has been granted no, and has no, rights or legitimate interests in the Complainant's trademarks, and hence no right to use them in the disputed domain name or otherwise.

Further the Complainant asserts that the disputed domain name was obviously registered in bad faith with knowledge of the Complainant's trademarks and well-known brand and that the Respondent has in bad faith sought to profit from this registration by marketing swimwear and other products in a deliberate attempt to seek to profit from a false association with the Complainant's trademarks and products.

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

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The disputed domain name begins with and contains the entirety of the Complainant's VIX PAULA HERMANNY trademark with the addition of the suffix "us"; this addition does not prevent the confusing similarity between the disputed domain name and the Complainant's marks.

Thus, the disputed domain name is nearly identical to, and certainly confusingly similar to, the Complainant's trademarks.

The Panel therefore finds the first element of paragraph 4(a) of the Policy has been established.

B. Rights or Legitimate Interests

The complainant in a UDRP proceeding must establish at least a prima facie case that the respondent has no rights or legitimate interests in respect of the disputed domain name. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). Once such a prima facie case is made, the burden of production shifts to the respondent to prove that it has rights or legitimate interests in the disputed domain name. See also, *Meizu Technology Co., Ltd v. "Osama bin laden"*, WIPO Case No. [DCO2014-0002](#).

In the present case, the Complainant has made clear that it has not licensed, authorised, or otherwise permitted the Respondent to use its mark in a domain name or in any other manner. Nor is there any evidence that the disputed domain name was used in any bona fide offering of goods or services. Indeed, the Complainant has asserted with evidence that the Respondent made use of the disputed domain name that is confusingly similar to the Complainant's trademarks to attract Internet users for commercial gain. This point is further discussed in connection with bad faith in the section below; to the extent the disputed domain name has been used for illegitimate activity this can never confer rights or legitimate interests in the same to the Respondent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.13.

There is also no evidence before the Panel to suggest that the Respondent is commonly known by the disputed domain name or any other evidence or indicia suggesting that the Respondent has any rights or legitimate interests in the disputed domain name. The Respondent, having failed to answer the Complaint, did not rebut the Complainants' prima facie case, and thus, Panel finds that the Complainant has accordingly met its burden under paragraph 4(a)(ii) of the Policy; the second element of the Policy has therefore been established.

C. Registered and Used in Bad Faith

The Complainant has established that its trademarks, which largely mirrors its company name and primary website, are established and well-known in the clothing and swimwear market. The Respondent has registered a disputed domain name that incorporates the Complainant's trademarks with the addition of "us", likely intended as an abbreviation for United States, where both the Respondent and Complainant operate. The Complainant here submits that the disputed domain name can only have been registered with knowledge of the Complainant's trademarked brand and name; the Panel agrees. Given the composition of the disputed domain name, it could not here have been chosen by serendipity, but rather was registered in bad faith and with an intent to profit from the confusion engendered by the disputed domain name. See *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#).

This conclusion is fully sustained by the actual use to which the Respondent has put the disputed domain name. The Complaint explains and documents that through the disputed domain name the Respondent has set up a website that advertises and sells swimwear and bikinis under the Complainant's trademarks, thus seeking improperly to profit from the confusing similarity of the disputed domain name to the

Complainant's marks and brand for its commercial gain; even to the point of reproducing the Complainant's figurative logos on the disputed domain name website. This is clear bad faith use under the Policy.

The Panel finds and concludes that the Complainant has established the third element of paragraph 4(a) 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 <vixpaulahermannyus.com> be transferred to the Complainant.

/Nicolas Ulmer/

Nicolas Ulmer

Sole Panelist

Date: November 7, 2024