

ADMINISTRATIVE PANEL DECISION

Triple Whale Inc. v. Tianna Smith, Tianna Smith, Sadye Poulos, Sadye Poulos

Case No. D2024-3808

1. The Parties

Complainant is Triple Whale Inc., United States of America, represented by Day Pitney LLP, United States of America (“US”).

Respondents are Tianna Smith and Sadye Poulos, US.

2. The Domain Name and Registrar

The disputed domain names: <triple-whale.live>, <triple-whale.net>, <triple-whale.org>, <triplewhales.com>, and <triple-whale.xyz> are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 18, 2024. On September 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 20, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names that differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to Complainant on September 23, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting Complainant either to file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, to demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. Complainant filed an amended Complaint on September 27, 2024.

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 Respondents of the Complaint, and the proceedings commenced on October 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2024. Respondents did not submit any response. Accordingly, the Center notified Respondents' default on October 24, 2024.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on October 30, 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 has a cloud-based e-commerce platform that provides predictive analytics based on consumer data, targeted to the development and management of online shopping businesses.

Complainant owns registrations for its TRIPLE WHALE marks, including, for example, US Registration No. 7,441,819, registered July 9, 2024, in International Classes 9, 35, and 41, with a first use in commerce date of June 2021 (and first use in commerce date of October 2021 for International Class 41). Complainant also owns a trademark registration for its "whale tail" stylized whale fluke logo under US Registration No. 7,443,205, also registered July 9, 2024, in the same classes, with the same first use in commerce dates.

The <triple-whale.net>, <triple-whale.org>, <triplewhale.live>, and <triple-whale.xyz> disputed domain names were registered by Respondent Sadye Poulos on May 20, 2024. The <triplewhales.com> disputed domain name was registered by Respondent Tianna Smith on July 18, 2024. Each registrant used the name of a different fictitious, non-existent town when providing contact information to the Registrar.

The <triple-whale.org> and <triple-whale.xyz> disputed domain names currently resolve to web pages presenting what appears to be identical content, offering for sale numerous consumer apparel, jewelry, and electronics products. Both websites use "About Us" descriptions that copy material from Complainant's official website at <triplewhale.com>; both websites use the same email for "Customer Enquiries"; both websites also reproduce Complainant's registered whale fluke logo as favicons.

The remaining disputed domain names do not currently resolve to active webpages. However, archives show that, at least in July 2024, all of the disputed domain names (including <triplewhales.com>) resolved to websites with the same "About Us" content and identical Customer Enquiries contact information described above, with the exception of the webpage at <triple-whales.live>, for which archives were unavailable.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for transfer of each of the disputed domain names.

Specifically, Complainant avers that Respondent has targeted Complainant's business. At the time of filing, Complainant averred that each disputed domain name routed to active websites with identical content making unauthorized use of Complainant's TRIPLE WHALE trademark and whale tail logo design mark, for the advertising and sale of consumer goods.¹

¹In the case of <triplewhale.net>, Complainant notes that it is necessary to add the third-level domain "v1" to display that identical content.

Complainant also avers that each disputed domain name (1) was registered via the same Registrar, (2) uses the same DNS servers, and (3) uses the identical email address for Customer Enquiries on each website to which the disputed domain names resolve. Under these circumstances, Complainant contends that consolidation in a single UDRP proceeding of the multiple disputed domain names and nominal respondents is appropriate.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Consolidation: Multiple Respondents

As a threshold matter, the Panel must rule on whether it is appropriate to include the nominally different Respondents in this single proceeding.

The amended Complaint was filed against two different registrants, however Complainant alleges that the domain name registrants are under common control. Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on Complainant's consolidation request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing Complainant's request, the Panel considers whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

The Panel has already described above the extent to which the disputed domain names have resolved (or currently resolve) to web pages that display identical content and include Complainant's trademarks. It is particularly significant in the Panel's view that the same email address is used for the online Customer Enquiry section of the websites registered by both Respondents. In addition, the disputed domain names were all registered with the same registrar and use the same domain name server. Therefore, the Panel finds that all of the disputed domain names and their respective websites are under common control.

Under the circumstances, the Panel also sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate in a single proceeding the disputes involving the nominally different disputed domain name registrants (referred to below as "Respondent").

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 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.

Complainant has shown rights in respect of a trademark or service mark for purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within each of the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which 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 that Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted 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.

It appears to the Panel that Respondent has used the disputed domain names to impersonate Complainant. It also appears that Respondent is illegally infringing Complainant’s trademarks, both in webpage headings and the favicon that reproduces Complainant’s registered whale fluke logo. It is also abundantly clear that Respondent’s commercial online offerings (using the confusingly similar disputed domain names) are not bona fide.

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

The Panel finds that the second element Policy paragraph 4(a) 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 Respondent used the disputed domain names to resolve to websites that impersonate Complainant. The allegedly commercial websites feature (i) Complainant’s TRIPLE WHALE mark, (ii) Complainant’s registered whale fluke logo (both at the top of the homepages and as favicons), and (iii) language taken from the “About Us” webpage on Complainant’s actual legitimate website.

This appears to the Panel to be a classic instance of bad faith, attempting to attract users for commercial gain, by creating a likelihood of confusion with Complainant’s marks. Policy paragraph 4(b)(iv).

Panels have also held that the use of a domain name for illegal activity (as described above) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

Finally, Respondent provided false contact information when registering the disputed domain names. Specifically, the addresses provided by each nominal registrant were in two fictitious, non-existent towns, ostensibly in Colorado and New Hampshire. Under the circumstances, providing false contact information in violation of Respondent's agreement with the Registrar is yet additional evidence of bad faith.

The Panel finds that Complainant has also established the third element of Policy paragraph 4(a).

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 names <triple-whale.live>, <triple-whale.net>, <triple-whale.org>, <triplewhales.com>, and <triple-whale.xyz> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: November 11, 2024