

ADMINISTRATIVE PANEL DECISION

Collective Footwear B.V. v. Zhang Fei
Case No. D2024-3877

1. The Parties

The Complainant is Collective Footwear B.V., Netherlands (Kingdom of the), represented by Taylor Wessing N.V., Netherlands (Kingdom of the).

The Respondent is Zhang Fei, China.

2. The Domain Name and Registrar

The disputed domain name <nubikkamsterdam.com> is 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 23, 2024. On September 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 25, 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 (Alibaba.com Singapore E-commerce Private Ltd.) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 25, 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 26, 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 the Respondent of the Complaint, and the proceedings commenced on October 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 26, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on November 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.

4. Factual Background

The Complainant is a globally operating company headquartered in the Netherlands, that designs, distributes and markets shoes and other fashion items.

The Complainant owns an international portfolio of registered trademarks for NUBIKK, including but not limited to Benelux Trademark Registration number 917536 for the NUBIKK word mark, registered on July 10, 2012, and European Union Trade Mark Registration number 012874236 for the NUBIKK word mark, registered on October 8, 2014. The Complainant also has a strong online presence, including through social media, and owns prior domain names including <nubikk.com>.

The disputed domain name was registered by the Respondent on February 11, 2023, and pointed to a website which looks highly similar to the Complainant's website and purportedly offering for sale a number of discounted products originating from the Complainant. According to the Complainant's evidence of numerous consumer complaints, consumers placing orders via such website lost their money and never obtained any products or further response from the Respondent. The Panel notes that on the date of this Decision, the disputed domain name points to an error or inactive website.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that it is the owner of several registered trademarks consisting of NUBIKK (word marks and logo marks) and that it has a strong reputation for the products under this trademark. The Complainant asserts that the disputed domain name is confusingly similar to the abovementioned trademarks since it incorporates such marks in their entirety, adding only the geographical term "amsterdam". The Complainant essentially contends that the Respondent has linked the disputed domain name to an imposter website and is running a fraudulent scheme via such website (due to the fact that Internet users are requested to make payments for products that are never delivered), and that the Respondent is impersonating the Complainant for undue commercial gain. The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name, and that such use made of the disputed domain name does not confer any rights or legitimate interests and that it proves that the Respondent has registered and is using the disputed domain name in bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

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 3.0](#), section 1.7.

Based on the available record, the Panel finds 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.

The Panel finds that the Complainant's marks for NUBIKK are clearly recognizable within the disputed domain name, since the disputed domain name fully incorporates these marks. Accordingly, the disputed domain name is confusingly similar to these marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of another term, here "amsterdam", 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.

Based on the available record, the Panel finds 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 domain names 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.

Moreover, upon review of the facts and evidence, the Panel notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Instead, the Panel notes that the disputed domain name directed to an active website which showed a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant's website (e.g. the prominent use of the NUBIKK trademarks and Complainant's product images), for use in an apparent fraudulent scheme attempting to obtain undue consumer payments for products that were never delivered by the Respondent. Panels have consistently held that the use of a domain name for illegal activity, here, claimed impersonation/passing off as well as consumer payment fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Additionally, the Panel also finds that the nature of the disputed domain name, incorporating the Complainant's trademarks in their entirety and containing the geographic term "amsterdam", carries a risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant and its products or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

Finally, the Panel notes that on the date of this Decision, the disputed domain name directs to an error webpage. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent (see in this regard earlier UDRP decisions such as *Bollre SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#); and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

Based on the available record, 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.

Given the intensive use and strong reputation of the Complainant's prior registered trademarks, the Panel finds that the subsequent registration of the disputed domain name, which is confusingly similar to such marks, clearly and consciously targeted the Complainant's prior registered trademarks. The Panel therefore deduces from the Respondent's efforts to consciously target the Complainant's reputable prior trademarks that the Respondent knew of the existence of the Complainant's trademarks at the time of registering the disputed domain name. This finding is confirmed by the fact that the website linked to the disputed domain name was an imposter website used in a fraudulent scheme, since this proves that the Respondent was fully aware of the Complainant's business and its prior trademarks. In the Panel's view, the foregoing elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directed to an active imposter website used in a scheme apparently set up to defraud online consumers. The Panel concludes from these facts that the Respondent was intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. The Panel therefore finds that it has been demonstrated that the Respondent has used and is using the disputed domain name in bad faith.

Furthermore, panels have consistently held that the use of a domain name for illegal activity, here, claimed impersonation/passing off as well as consumer payment fraud, 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.

Moreover, the Panel notes that on the date of this Decision, the disputed domain name directs to an error or inactive website. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and longstanding use of the Complainant's trademarks, the composition of the disputed domain name, the past use of the disputed domain name in a fraudulent impersonation scheme and the unlikelihood of any future good faith use of the disputed domain name by the Respondent, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of 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 <nubikkamsterdam.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: November 25, 2024