

ADMINISTRATIVE PANEL DECISION

Yamaha Corporation v. Frederick Waller, Yamaha Kemble
Case No. D2024-4301

1. The Parties

The Complainant is Yamaha Corporation, Japan, internally represented.

The Respondent is Frederick Waller, Yamaha Kemble, United Kingdom, internally represented.

2. The Domain Name and Registrar

The disputed domain name <yamahamusic europe.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 18, 2024. On October 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 21, 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 (Whois Privacy Protection Foundation) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 23, 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 October 24, 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 October 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2024. The Respondent sent email communications to the Center on October 27, 2024. On October 28, 2024, the Center sent an email regarding possible settlement to the Parties, the Complaint did not request to suspend the proceeding. The Center notified the commencement of the panel appointment on November 14, 2024.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on November 18, 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 manufacturer of musical instruments established in 1897. The Complainant owns trademark registrations for YAMAHA worldwide, such as European Union Trade Mark No. 000191387, registered on October 15, 1998.

The disputed domain name was registered on February 2, 2024, and resolves to a website that purports to offer the Complainant's products and related services.

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 the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The trademark YAMAHA is registered worldwide and is globally recognized. The disputed domain name incorporates the Complainant's trademark in its entirety. The addition of the terms "music" and "europe" does not eliminate the confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has no relation to the Complainant or its products. There is no evidence that the Respondent is commonly known by the trademark YAMAHA. The Complainant did not authorize the Respondent to use its trademark nor did the Respondent register the trademark.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent was aware of the Complainant's rights in the trademark YAMAHA when it registered the disputed domain name. The trademark YAMAHA is world-famous and would come up through a simple Internet search. The Respondent intends to direct Internet users to a website that is operated by the Respondent.

B. Respondent

The Respondent did not submit a formal reply to the Complainant's contentions. Instead, through an email sent on October 27, 2024, the Respondent stated the following: "Hi there, its to make things easier for people wanting to talk to Yamaha Technicians and Staff. And to teach Music in all Genres. Yamaha dont mind us taking the emails that leaves them to be more creative its so Yamaha Equipment can be repaired easier. Google have said this about Your email this on the attachment doesnt look like a reliable company Google said. Thank You. Fred Sumner Waller, Music Director Yamaha Music Europe."

In another email of the same date, the Respondent wrote the following "As I say I would get the 1000 usd as I'm the complainant. Fred Sumner Waller, Music Director. Yamaha Music Europe."

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 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.

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

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

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 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 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. The answer provided by the Respondent does not in any manner establish rights or legitimate interests. Even if there could be an argument that the Respondent is offering the Complainant's product or services related thereto, the requirements of the *Ok! Data* test have not been met in this case. Moreover, while the Respondent has provided an organization name of "Yamaha Kemble" in the registration details of the disputed domain name and "Yamaha Music Europe" in his email communications, the Panel notes that there is no evidence in the record that the Respondent is commonly known by the disputed domain name or a name corresponding to the disputed domain name. Rather, it appears that the Respondent has provided such organization names to falsely suggest an affiliation with the Complainant, which would not support a finding of rights or legitimate interests under 4(c)(ii) of the Policy or otherwise. [WIPO Overview 3.0](#), section 2.3.

Panels have held that the use of a domain name for illegitimate activity here, claimed 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 Respondent knew of the Complainant's trademark and is attempting to pass off as the Complainant or as being endorsed by the Complainant by using the latter's trademark and logo on its website. In fact, the Respondent did not deny in his emails his knowledge of the Complainant. On the contrary, he seemed to confirm such knowledge. Therefore, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegitimate activity, such as 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 <yamahamusiceurope.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: November 20, 2024