

ADMINISTRATIVE PANEL DECISION

Yamaha Corporation v. Fred Waller, Yamaha/Chappell Of Bond Street/Kemble

Case No. D2024-4302

1. The Parties

The Complainant is Yamaha Corporation, Japan, represented internally.

The Respondent is Fred Waller, Yamaha/Chappell Of Bond Street/Kemble, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <yamahakemble.com> is registered with Squarespace Domains II LLC (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 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 (Squarespace, Inc., Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 21, 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 22, 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 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 11, 2024. The Respondent sent email communications to the Center on October 22, 24, 25, and 29, and November 12, 2024. Pursuant to paragraph 6 of the Rules, the Center informed the Parties that it would proceed to Panel Appointment on November 12, 2024.

The Center appointed Jeremy Speres as the sole panelist in this matter on November 19, 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.

The Respondent sent another email communication to the Center on November 26, 2024.

4. Factual Background

The Complainant, founded in 1897, manufactures musical instruments and audio equipment under its YAMAHA mark, which it sells in many countries. The Complainant's mark has been recognized as being well known by prior UDRP panels, including the panel in *Yamaha Corporation v. Privat*, WIPO Case No. [D2003-0522](#).

The Complainant's YAMAHA mark is registered in many jurisdictions, including United States of America Trademark Registration No. 3559368 YAMAHA in classes 3, 8, 9, 15, and 21, having a registration date of January 13, 2009.

The disputed domain name was registered on October 22, 2021, and currently resolves to a website prominently entitled "Yamaha Kemble", ostensibly for a business selling "Yamaha Kemble" pianos.

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 was registered and has been used in bad faith in order to take advantage of confusion with the Complainant's well-known YAMAHA mark.

B. Respondent

The Respondent sent numerous informal communications to the Center, many of which were unintelligible or irrelevant to the matter at hand. As far as the Panel can make out, the Respondent seems to contend that it operates a musical instrument sales, manufacturing and repair business. Importantly for this matter, the Respondent claimed: "If we are to sell other brands we have to represent them by not just selling Yamaha Music."

In view of the repeated nature of the claims, the Panel has not considered the Respondent's communication of November 26, 2024, which would not have impacted the outcome of this proceeding regardless.

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 “kemble”, 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.

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 general impression created by the website to which the disputed domain name resolves is that it is an official presence for the Complainant’s piano products. To the extent that the disputed domain name’s website might be considered that of a reseller of the Complainant’s products, it does not meet the requirements of the well-known “Ok! Data test” given that the site does not accurately and prominently disclose the Respondent’s relationship with the Complainant. The Respondent also seems to suggest, by responding along the lines of the quoted passage included at paragraph 5B above, that it sells other brands besides those of the Complainant. This, too, is contrary to the requirement of the “Ok! Data test” that the Respondent should sell only the trademarked goods. *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and [WIPO Overview 3.0](#), section 2.8.

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.

For the following reasons, the Panel finds that it is more likely than not that the Respondent registered and has used the disputed domain name to take advantage of confusion with the Complainant’s well-known mark for the Respondent’s commercial gain, falling squarely within paragraph 4(b)(iv) of the Policy.

UDRP panels have consistently found that the registration of a domain name that is confusingly similar to a well-known trademark, as in this case, can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), sections 3.1.4. The Respondent has failed to rebut this presumption.

The disputed domain name's website creates the impression, through prominent use of the Complainant's mark throughout the site, that it is an official presence of the Complainant. The website relates to the sale of "Yamaha Kemble" pianos, with the Complainant itself trading in pianos. There is also nothing on the website indicating that it is operated independently to the Complainant and is not associated with the Complainant. As a result, an Internet user viewing the disputed domain name's website is left with the impression that it is operated by the Complainant, which clearly points to bad faith targeting.

The Panel has independently established that at least one security vendor has flagged the disputed domain name for phishing, which is a clear indicator of bad faith. ¹ *The Commissioners for HM Revenue and Customs v. WhoisGuard Protected, WhoisGuard, Inc. / Hoshyar Marshall*, WIPO Case No. [D2021-0344](#).

The Respondent's numerous, rambling, irrelevant, and nonsensical communications are suggestive of an attempt at obfuscation aimed at confusing the issues. In the circumstances of this case, this points to bad faith.

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 <yamahakemble.com> be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: November 27, 2024

¹Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. [WIPO Overview 3.0](#), section 4.8.