

ADMINISTRATIVE PANEL DECISION

Apropoz Distribution Inc. v. fe653 edasd
Case No. D2024-4641

1. The Parties

The Complainant is Apropoz Distribution Inc., Canada, represented by Benoît & Côté Inc. Intellectual Property Law Firm, Canada.

The Respondent is fe653 edasd, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <indyevaclothing.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 12, 2024. On November 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 13, 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 (TO BE DETERMINED–NOT PUBLICLY DISCLOSED / Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 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 November 13, 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 November 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 10, 2024.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on December 16, 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, founded in 2014, specializes in the design and sale of high-quality outdoor clothing under the brand name INDYEVA. The Complainant owns many trademark registrations for INDYEVA such as:

- European Union Trademark Registration No. 018105269, registered on January 9, 2020; and
- United States Registration No. 6,413,983, registered on July 13, 2021.

The Complainant owns the domain name <indyeva.com> registered in May 2019.

The disputed domain name was registered on September 13, 2024, and redirects to a website, which purports to offer the Complainant's products at discounted prices.

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 Complainant, in addition to registering its trademark, has established substantial goodwill and reputation in its trademark. The disputed domain name adds the word "clothing" to the Complainant's trademark, which does not alter the high degree of similarity. The word "clothing" is a descriptive term. Additionally, the Complainant's trademark has a high degree of inherent distinctiveness.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. Fraudulent activities can never confer rights or legitimate interests. There is no bona fide offering of goods or services. There is no relationship between the Complainant and the Respondent, and the Complainant did not authorize or license the Respondent to use its trademark. The disputed domain name is being used to offer products identical and competing to those of the Complainant. There is no history of common knowledge or recognition associated with the domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith.

The use of the disputed domain name reflects an intent to disrupt the Complainant's business operations. The disputed domain name is used in an attempt to intentionally attract for commercial gain Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark. The Respondent lacks legitimate rights or interests in the disputed domain name. The Respondent is engaged in deceptive and fraudulent activities as there is a payment form available on its website.

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 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, "clothing" 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 Panel notes that the disputed domain name resolves to a website which displays the Complainant's trademark and purportedly offers for sale the Complainant's products at discounted prices.

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.

Moreover, since the disputed domain name consists of the Complainant's trademark together with a term "clothing" that indicates the Complainant's products, such composition cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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 Panel notes that the Respondent is attempting to pass off as the Complainant by using the latter's trademark on its website. 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 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 <indyevaclothing.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: December 19, 2024