

ADMINISTRATIVE PANEL DECISION

Stokke AS v. Weng Hong Chan, WHC CONSULTANTS PTY LTD
Case No. DAU2022-0001

1. The Parties

The Complainant is Stokke AS, Norway, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Weng Hong Chan, WHC CONSULTANTS PTY LTD, Australia.

2. The Domain Name and Registrar

The disputed domain name <stokke.com.au> is registered with Drop.com.au Pty Ltd (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 3, 2022. On February 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the "Policy" or ".auDRP"), the Rules for .au Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceeding commenced on February 18, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was March 10, 2022. The Respondent did not submit any response. The Respondent sent an informal email communication to the Center on March 11, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on March 17, 2022. 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.

On April 5, 2021, the Panel extended the due date for this Decision until April 8, 2022.

4. Factual Background

A. Complainant

The Complainant is a company incorporated in Norway in 1932 and a designer and manufacturer of innovative ergonomic furniture including, in particular and since 1972, ergonomic furniture for children, marketed and sold under the trade mark STOKKE (the "Trade Mark"). The Complainant is the owner of numerous registrations worldwide for the Trade Mark, including Australian registration No. 1132741, with a registration date of December 17, 2004; Australian registration No. 1491277, with a registration date of March 30, 2012; German registration No. 39930885, with a registration date of May 28, 1999; and International registration No. 891394, with a registration date of December 17, 2004.

The Complainant markets and sells its products under the Trade Mark via its primary website at "www.stokke.com" and also, in Australia, via its official Australian online store at "www.stokkeshop.com.au".

B. Respondent

The Respondent is an individual resident of Australia.

C. The Disputed Domain Name

The disputed domain name was registered on April 23, 2021.

D. No Use of the Disputed Domain Name

The disputed domain name is resolved to a blank web page.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name has been registered or subsequently used in bad faith.

B. Respondent

The Respondent did not reply formally to the Complainant's contentions, but confirmed in his informal email communication to the Center that (as stated in his email correspondence with the Complainant's representatives prior to the filing of the Complaint), he would have transferred the disputed domain name to the Complainant, if the Complainant had paid for the transfer fees.

6. Discussion and Findings

6.1 Eligibility

Schedule A to the .auDA Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (the "Eligibility Rules") provides relevantly as follows:

ELIGIBILITY AND ALLOCATION RULES FOR ALL OPEN 2LDS

First come, first served

1. Domain name licences are allocated on a 'first come, first served' basis. It is not possible to pre-register or otherwise reserve a domain name.

Registrants must be Australian

2. Domain name licences may only be allocated to a registrant who is Australian, as defined under the eligibility and allocation rules for each 2LD.

Schedule C to the Eligibility Rules provides relevantly as follows:

ELIGIBILITY AND ALLOCATION RULES FOR COM.AU

The com.au 2LD is for commercial purposes.

The following rules are to be read in conjunction with the Eligibility and Allocation Rules for All Open 2LDs, contained in Schedule A of this document.

1. To be eligible for a domain name in the com.au 2LD, registrants must be:

- a) an Australian registered company; or
- b) trading under a registered business name in any Australian State or Territory; or
- c) an Australian partnership or sole trader; or
- d) a foreign company licensed to trade in Australia; or
- e) an owner of an Australian Registered Trade Mark; or
- f) an applicant for an Australian Registered Trade Mark; or
- g) an association incorporated in any Australian State or Territory; or
- h) an Australian commercial statutory body.

The Panel considers that while its role does not necessarily extend to determining whether or not the Complainant satisfies the eligibility requirements for a transfer to take place (see *Miltenyi Biotec GmbH v. Rachel A. Liu-Williams*, WIPO Case No. [DAU2015-0033](#)), the Panel finds that the Complainant, as the owner of Australian Registered Trade Marks, meets the alternative eligibility requirements set out in paragraph 1(e) of Schedule C to the Eligibility Rules.

6.2 Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

The Panel notes that, in pre Complaint email correspondence, and also in his informal email correspondence with the Center, the Respondent has indicated that he was willing to transfer the disputed domain name to the Complainant, provided that the Complainant agreed to pay the transfer/registration fee. The Complaint was filed due to the Respondent's failure to respond to follow up email correspondence from the Complainant's representatives concerning the amount of the transfer/registration fee.

In all the circumstances, the Panel considers it is appropriate to consider each of the requisite elements under the Policy, as the Parties have not been unable to conclude an agreement concerning the transfer of the disputed domain name and, arguably, the Respondent has not unequivocally provided his consent to

transfer.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark, under paragraph 4(a) of the Policy, acquired through use and registration.

Disregarding the country-code Top-Level Domain ("ccTLD") ".com.au", the disputed domain name is identical to the Trade Mark.

Accordingly, the Complainant has fulfilled the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain has not been used for an active website.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In addition, the Panel notes the nature of the disputed domain name (being identical to the Trade Mark), which carries a high risk of implied association.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name.

In light of the above uncontested matters, the Panel finds that the Respondent has failed to produce any evidence to establish genuine rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has fulfilled the second condition of paragraph 4(a) of the Policy.

C. Registered or Used in Bad Faith

Given (i) the reputation of the Complainant and of its Trade Mark in the children's ergonomic furniture field; (ii) the distinctiveness of the Trade Mark; (iii) the fact the disputed domain name is identical to the Trade Mark; and (iv) the lack of any substantiated credible explanation from the Respondent, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out. The Panel considers the Respondent was most likely aware of the Complainant's Trade Mark at the time he registered the disputed domain name. Furthermore, the Respondent's non-use or passive holding of the disputed domain name would not prevent a finding of bad faith registration or use under the Policy.

Accordingly, the Complainant has fulfilled the third condition of paragraph 4(a) 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 <stokke.com.au> be transferred to the Complainant¹.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: April 8, 2021

¹ Provided that the Registrar (or Registry) is satisfied that the Complainant is eligible to be the holder and registrant of a domain name in the ".com.au" domain name space.