

ADMINISTRATIVE PANEL DECISION

Sullair LLC v. Southern Cross Compressors (Australia) Pty Ltd
Case No. DAU2023-0004

1. The Parties

The Complainant is Sullair LLC, United States of America (“United States”), represented by Fieldfisher LLP, United Kingdom.

The Respondent is Southern Cross Compressors (Australia) Pty Ltd, Australia.

2. The Domain Name and Registrar

The disputed domain name <sullaircompressors.au> is registered with Web Address Registration Pty Ltd (“the Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2023. On January 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 16, 2023, 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 proceedings commenced on January 16, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was February 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 6, 2023.

The Center appointed Andrew F. Christie as the sole panelist in this matter on February 10, 2023. 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 1965, is a major manufacturer of portable and stationary rotary screw air compressors. It has offices in Chicago, and manufacturing facilities in the United States and China. In addition, the Complainant has seven offices in Australia, from which it provides customer care to Australian customers. The Complainant's products are available through a network of more than 22 locations across Australia. The Complainant became a Hitachi Group Company in July 2017.

The Complainant is the owner of many trademark registrations for the word trademark SULLAIR, including Australian Trade Mark No. 260745 (filed on and registered from August 1, 1972). The Complainant predominantly advertises and markets its business through its website at the domain name <sullair.com.au>.

The disputed domain name was registered on March 24, 2022. The Complainant has provided a screenshot, taken on December 7, 2022, showing that the disputed domain name resolved to a Crazy Domains webpage displaying the disputed domain name followed by the words "Is this your domain name? Activate your domain instantly by connecting to multiple services within your Account Manager". At the date of this decision, the disputed domain name resolves to what appears to be the same webpage.

5. Parties' Contentions

A. Complainant

The Complainant made the following contentions to establish that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant's word trademark SULLAIR is highly distinctive. The disputed domain name contains the word element SULLAIR, which is identical to the Complainant's trademark. The additional element in the disputed domain name, "compressors", is descriptive of the Complainant's business, which is principally the manufacture of compressors. Therefore, the addition of this element increases the likelihood of confusion for an Internet user that any website linked to the disputed domain name is connected in some way to the Complainant's business.

The Complainant made the following contentions to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not used the disputed domain name in connection with an offering of goods or services, and has made no demonstrable preparations to do so. Any use by the Respondent of the disputed domain name would not relate to a *bona fide* offering of goods and services. There is no evidence to indicate that the Respondent or the Respondent's business is commonly known by the disputed domain name. The Respondent is not making any legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the name and trademark at issue. The disputed domain name does not link to an active website, and this may lead Internet users to believe that the Complainant is not commercially active in Australia, when in fact it is.

The Complainant made the following contentions to establish that the disputed domain name was registered or is being used in bad faith. The registration of the disputed domain name is primarily intended to disrupt the business of the Complainant, evidenced by the fact that the disputed domain name contains the word element SULLAIR, which is identical to the trademark owned by the Complainant. There is no content on the web page resolving from the disputed domain name, so it is clear that the disputed domain name has been registered purely to prevent the Complainant from using this domain name which includes their name. That the disputed domain name does not link to an active website may lead Internet users to believe that the Complainant is not commercially active in Australia, when in fact it is. The Respondent is a competitor of the Complainant, it has been acquired by another competitor of the Complainant, Kaishan Compressors Australia, and the Respondent contact is employed by Kaishan Compressors. Therefore, there is no doubt that the Respondent registered the disputed domain name in order to disrupt the Complainant's online commercial activity, and to prevent the Complainant from reflecting the name SULLAIR COMPRESSORS in

a corresponding domain name from which it can sell its products, a bad faith practice known as “domain squatting”.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Once the country-code Top-Level-Domain (“ccTLD”) extension “.au” is ignored (which is appropriate in this case), the disputed domain name consists of the whole of the Complainant’s registered word trademark SULLAIR, with the addition of the word “compressors”. The Complainant’s trademark is clearly recognizable within the disputed domain name. The addition of the word “compressors”, which is descriptive of the Complainant’s business, does not avoid a finding of confusing similarity of the disputed domain name with the Complainant’s trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent is not a licensee of the Complainant, is not otherwise affiliated with the Complainant, and has not been authorized by the Complainant to use its SULLAIR trademark. The Respondent has not provided any evidence that it has been commonly known by, or has made a *bona fide* use of, the disputed domain name, or that it has, for any other reason, rights or legitimate interests in the disputed domain name. The evidence provided by the Complainant shows that the disputed domain name resolves to a landing page that is inactive. Given the confusing similarity of the disputed domain name to the Complainant’s trademark, the absence of any relationship between the Respondent and the Complainant, and the risk of implied false affiliation with the Complainant, the Respondent’s use of the disputed domain name is neither a *bona fide* use nor a legitimate non-commercial or fair use.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not rebutted this. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered or Subsequently Used in Bad Faith

The disputed domain name was registered many decades after the Complainant and its predecessors started using, and registered, the SULLAIR trademark. It is inconceivable that the Respondent registered the disputed domain name ignorant of the existence of the Complainant’s trademark, given that the disputed domain name consists of the Complainant’s trademark with the addition of the word “compressors”, a product which the Complainant manufactures. Given the Respondent’s lack of rights or legitimate interests in the disputed domain name and the confusing similarity of the disputed domain name to the Complainant’s trademark, any use of the disputed domain name by the Respondent almost certainly implies an affiliation with the Complainant that does not exist. The Respondent’s registration of the disputed domain name in these circumstances is a bad faith registration.

Accordingly, the Panel finds that the disputed domain name has been registered in bad faith.

7. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name, <sullaircompressors.au>, be transferred to the Complainant.

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: February 24, 2023