



DECISION

Devicom International, Inc. v. guoyaqi

Claim Number: FA1503001608570

PARTIES

Complainant is **Devicom International, Inc.** ("Complainant"), represented by **Robert J. Lauson** of **Lauson & Tarver LLP**, California, USA. Respondent is **guoyaqi** ("Respondent"), China.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<sneakerheadclub.com>**, registered with **PDR Ltd. d/b/a PublicDomainRegistry.com**.

PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

Kenneth L. Port as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on March 6, 2015; the FORUM received payment on March 6, 2015.

On March 10, 2015, PDR Ltd. d/b/a PublicDomainRegistry.com confirmed by e-mail to the FORUM that the **<sneakerheadclub.com>** domain name is registered with PDR Ltd. d/b/a PublicDomainRegistry.com and that Respondent is the

current registrant of the name. PDR Ltd. d/b/a PublicDomainRegistry.com has verified that Respondent is bound by the PDR Ltd. d/b/a PublicDomainRegistry.com registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On March 12, 2015, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of April 1, 2015 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@sneakerheadclub.com. Also on March 12, 2015, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

Having received no response from Respondent, the FORUM transmitted to the parties a Notification of Respondent Default.

On April 14, 2015, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the FORUM appointed Kenneth L. Port as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN

Rules, the FORUM'S Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

Complainant claims that it holds the SNEAKERHEAD trademark by virtue of its registration with the United States Patent and Trademark Office ("USPTO") (Reg. No. 4,153,871, registered June 5, 2012). Complainant uses the SNEAKERHEAD mark in connection with its online retail store, featuring shoes, boots, watches, socks, sunglasses, t-shirts, knives, bags, and backpacks.

The Complainant alleges that the <sneakerheadclub.com> domain name is confusingly similar to the SNEAKERHEAD mark. The domain name adds the generic term "club" and simply adds the generic top-level domain ("gTLD") ".com" to the domain name.

Complainant further asserts that Respondent has no rights or legitimate interests in the disputed domain name. Respondent's lack of rights or legitimate interests in the <sneakerheadclub.com> domain name is made evident by Respondent's failure to use the disputed domain name in connection with a bona fide offering of goods or services, or for a legitimate noncommercial or fair use. Respondent uses the <sneakerheadclub.com> domain name to pass itself off as Complainant.

Complainant also alleges that Respondent has engaged in bad faith registration and use of the <sneakerheadclub.com> domain name. Respondent's use of the disputed domain name disrupts Complainant's business by diverting Internet customers seeking Complainant's website. Further, Respondent intentionally attracts, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant's mark.

B. Respondent

Respondent failed to submit a Response in this proceeding. Respondent registered the disputed domain name on August 30, 2014. Although no formal Response was filed, Respondent did communicate with the Complainant and offered to cease use of the disputed domain name.

FINDINGS

As the Respondent has failed to file a response in this matter, the Panel accepts as true the reasonable asserts of the Complainant. As such, the Panel finds that the disputed domain name is confusingly similar to Complainant's registered trademark, that the Respondent has no demonstrated rights or legitimate interests in the domain name, and that the Respondent has engaged in bad faith use and registration of the disputed domain name.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory.

See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Identical and/or Confusingly Similar

Complainant is the registrant of the SNEAKERHEAD trademark registration with the USPTO (Reg. No. 4,153,871, registered June 5, 2012). Complainant states that it uses the SNEAKERHEAD mark in connection with its online retail store, featuring shoes, boots, watches, socks, sunglasses, t-shirts, knives, bags, and backpacks. Prior panels have concluded that registration of a mark with a trademark authority is sufficient to establish rights in the mark pursuant to Policy ¶ 4(a)(i), even when Respondent does not reside in the country where the mark is registered. *See Metro. Life Ins. Co. v. Bonds*, FA 873143 (Nat. Arb. Forum Feb. 16, 2007) (finding that a USPTO trademark registration adequately

demonstrates a complainant's rights in a mark under Policy ¶ 4(a)(i); see also *Williams-Sonoma, Inc. v. Fees*, FA 937704 (Nat. Arb. Forum Apr. 25, 2007) (finding that it is irrelevant whether the complainant has registered its trademark in the country of the respondent's residence). Accordingly, even though Respondent reportedly resides in China, the Complainant's USPTO registration is sufficient under Policy ¶ 4(a)(i).

Complainant further argues that the <sneakerheadclub.com> domain name is confusingly similar to the SNEAKERHEAD mark. Complainant asserts that the domain name adds the generic term "club" and simply adds the gTLD ".com" to the domain name. Prior panels have found that the addition of a generic word or term does not adequately distinguish the disputed domain name from the registered mark. See *Arthur Guinness Son & Co. (Dublin) Ltd. v. Healy/BOSTH*, D2001-0026 (WIPO Mar. 23, 2001) (finding confusing similarity where the domain name in dispute contains the identical mark of the complainant combined with a generic word or term). Further, prior panels have agreed that the addition of a gTLD does not negate confusing similarity. See *OL Inc. v. Morgan*, FA 1349260 (Nat. Arb. Forum Nov. 4, 2010) (concluding that the addition of the generic top-level domain ("gTLD") ".com" does not distinguish the disputed domain name from the mark).

As such, the disputed domain name is confusingly similar to the Complainant's trademark under Policy ¶ 4(a)(i).

Rights or Legitimate Interests

Complainant makes no contentions regarding whether Respondent is commonly known by the disputed domain name pursuant to Policy ¶ 4(c)(ii). The WHOIS information for the disputed domain name lists "guoyaqi" as the registrant of record. The Respondent's failure to submit a formal Response, in

addition to the WHOIS information is sufficient evidence to find that Respondent is not commonly known by the disputed domain name. See *Am. W. Airlines, Inc. v. Paik*, FA 206396 (Nat. Arb. Forum Dec. 22, 2003) (“Respondent has registered the domain name under the name ‘Ilyoup Paik a/k/a David Sanders.’ Given the WHOIS domain name registration information, Respondent is not commonly known by the [awvacations.com] domain name.”).

Complainant asserts that Respondent’s lack of rights or legitimate interests in the sneakerheadclub.com domain name is made evident by Respondent’s failure to use the disputed domain name in connection with a bona fide offering of goods or services, or for a legitimate noncommercial or fair use. Complainant states that Respondent uses the sneakerheadclub.com domain name to pass itself off as Complainant. See Compl., at Attached Ex’s. B–C. Complainant asserts that Respondent purports to be Complainant through its use of the domain name and resolving website. Specifically, Respondent’s resolving website displays what appears to be Complainant’s products, and uses a color scheme similar to Complainant’s. *Id.* Complainant alleges that Respondent’s “passing off” behavior is not a bona fide offering of goods or services, or for a legitimate noncommercial or fair use, and past panels have agreed. See *Mortgage Research Center LLC v. Miranda*, FA 993017 (Nat. Arb. Forum July 9, 2007) (“Because [the] respondent in this case is also attempting to pass itself off as [the] complainant, presumably for financial gain, the Panel finds the respondent is not using the mortgageresearchcenter.org domain name for a bona fide offering of goods or services pursuant to Policy ¶ 4(c)(i), or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii).”).

As the Respondent failed to file a response, the Panel agrees with Complainant that Respondent has no rights or legitimate interests in respect to the disputed domain name under Policies ¶¶ 4(c)(i) or (c)(iii).

Registration and Use in Bad Faith

Complainant asserts that Respondent's use of the disputed domain name disrupts Complainant's business by diverting Internet customers seeking Complainant's website. Complainant alleges that actual disruption has already occurred, as Complainant's customers have inquired about Respondent. Prior panels have found that choosing a confusingly similar domain name to operate a competing website is disruptive and is evidence of bad faith. See *DatingDirect.com Ltd. v. Aston*, FA 593977 (Nat. Arb. Forum Dec. 28, 2005) ("Respondent is appropriating Complainant's mark to divert Complainant's customers to Respondent's competing business. The Panel finds this diversion is evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(iii).").

Therefore, the Panel finds bad faith registration and use under Policy ¶ 4(b)(iii).

Further, Complainant argues that Respondent intentionally attracts, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant's mark. Complainant asserts that Respondent has commercially benefited by consumers' confusion as to the source, sponsorship, or affiliation of Respondent's website, products, or services. Past panels have agreed that the offering of competing services under a confusingly similar mark, presumably for financial gain, is illustrative of bad faith under Policy ¶ 4(b)(iv). See *MathForum.com, LLC v. Weiguang Huang*, D2000-0743 (WIPO Aug. 17, 2000) (finding bad faith under Policy ¶ 4(b)(iv) where the respondent registered a domain name confusingly similar to the complainant's mark and the domain name was used to host a commercial website that offered similar services offered by the complainant under its mark).

Consequently, the Panel finds that Respondent has engaged in bad faith according to Policy ¶ 4(b)(iv).

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be granted.

Accordingly, it is Ordered that the <**sneakerheadclub.com**> domain name be transferred from the Respondent to the Complainant.



Kenneth L. Port
Panelist

Kenneth L. Port, Panelist

Dated: April 15, 2015