



## NATIONAL ARBITRATION FORUM

### DECISION

Devicom International, Inc. v Crowton

Claim Number: FA1409001578570

#### PARTIES

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

#### REGISTRAR AND DISPUTED DOMAIN NAME

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

#### PANEL

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

Bruce E. Meyerson as Panelist.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on September 5, 2014; the National Arbitration Forum received payment on September 5, 2014.

On September 12, 2014, PDR Ltd. d/b/a PublicDomainRegistry.com confirmed by e-mail to the National Arbitration Forum that the **<sneakerhaed.net>** 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 September 15, 2014, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of October 6, 2014 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@sneakerhaed.net. Also on September 15, 2014, 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 National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On October 8, 2014, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Bruce E. Meyerson as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration 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 National Arbitration 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 names be transferred from Respondent to Complainant.

## **PARTIES' CONTENTIONS**

### **A. Complainant**

1. Complainant uses SNEAKERHEAD for an online retail store selling shoes and related goods.
2. Complainant has registered the mark with the United States Patent and Trademark Office ("USPTO") (*e.g.*, Reg. No. 4,153,871 registered June 5, 2012, filed October 10, 2011). The domain name is essentially identical in that it merely misspells the mark.
3. Respondent has no rights and legitimate interests and uses the domain name to operate a competing online business.
4. Respondent has registered and uses the domain name in bad faith.
5. First, Respondent is disrupting Complainant's business. Second, Respondent is capitalizing on a likelihood of confusion.
6. The disputed domain name was registered July 29, 2014.

### **B. Respondent**

Respondent failed to submit a Response in this proceeding.

## FINDINGS

Complainant holds trademark rights for the SNEAKERHEAD mark. Respondent's domain name is confusingly similar to Complainant's SNEAKERHEAD mark. Complainant has established that Respondent lacks rights or legitimate interests in the use of the <sneakerhaed.net> domain name, and that Respondent registered and uses the domain name in bad faith.

## 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 uses the SNEAKERHEAD mark in connection with an online retail store selling shoes and related goods. Complainant has registered the mark with the United States Patent and Trademark Office ("USPTO") (*e.g.*, Reg. No. 4,153,871 registered June 5, 2012, filed October 10, 2010). This registration satisfies the Policy ¶ 4(a)(i) required showing of rights in this proceeding. *See Expedia, Inc. v. Tan*, FA 991075 (Nat. Arb. Forum June 29, 2007) ("As the [Complainant's] mark is registered with the USPTO, Complainant has met the requirements of Policy ¶ 4(a)(i).").

Complainant claims that the <sneakerhaed.net> domain name is essentially identical to its mark in that it merely misspells the mark. The Panel agrees with Complainant that merely transposing two letters in the mark and affixing ".net" does nothing to avoid a finding of confusing similarity. *See, e.g., Wyndham IP Corp. v. LaPorte Holdings, Inc.*, FA 373545 (Nat. Arb. Forum Jan. 17, 2005) (finding the <wynhdam.com> and <wyandham.com> domain names to be confusingly similar to the complainant's WYNDHAM mark because the domain names merely transposed letters in the mark).

The Panel finds Complainant has satisfied Policy ¶ 4(a)(i).

### Rights or Legitimate Interests

Complainant alleges that Respondent holds no rights or legitimate interests in the disputed domain name. This allegation must be supported with a *prima facie* showing by Complainant under Policy ¶ 4(a)(ii). After a complainant successfully makes a *prima facie* case, a respondent is faced with the burden of proving it does have rights or legitimate interests in the domain name. In *Swedish Match UK Ltd. v. Admin, Domain*, FA 873137 (Nat. Arb. Forum Feb. 13, 2007), the panel held that when a complainant produces a *prima facie* case, the burden of proof then shifts to the respondent to demonstrate its rights or legitimate interests in the domain name under Policy ¶ 4(c). *See also Compagnie Generale des Matieres Nucleaires v. Greenpeace Int'l*, D2001-0376 (WIPO May 14, 2001) (“For the purposes of this sub paragraph, however, it is sufficient for the Complainant to show a *prima facie* case and the burden of proof is then shifted on to the shoulders of Respondent. In those circumstances, the common approach is for respondents to seek to bring themselves within one of the examples of paragraph 4(c) or put forward some other reason why they can fairly be said to have a relevant right or legitimate interests in respect of the domain name in question.”). The Panel holds that Complainant has made a *prima facie* case.

Nothing in the record, as well as the WHOIS information, demonstrates that Respondent is commonly known by the domain name. *See Braun Corp. v. Loney*, FA 699652 (Nat. Arb. Forum July 7, 2006) (the respondent was not commonly known by the disputed domain names where the WHOIS information, as well as all other information in the record, gave no indication that the respondent was known by the domain names, and the complainant had not authorized the respondent to register a domain name containing its registered mark). Based on the record in this matter, the Panel concludes that Respondent is not commonly known by the disputed domain name pursuant to Policy ¶ 4(c)(ii).

Complainant alleges that Respondent has no rights and legitimate interests and uses the domain name to operate a competing online business. Respondent operates a competing shoe-sales business through the disputed domain name's resolving website. Using a confusingly similar domain name to host a competing business violates Policy ¶¶ 4(c)(i) or (iii). *See Ameritrade Holdings Corp. v. Polanski*, FA 102715 (Nat. Arb. Forum Jan. 11, 2002) (finding that the respondent's use of the disputed domain name to redirect Internet users to a financial services website, which competed with the complainant, was not a *bona fide* offering of goods or services).

The Panel finds Complainant has satisfied Policy ¶ 4(a)(ii).

#### **Registration and Use in Bad Faith**

Complainant argues that Respondent has registered and used the domain name in bad faith. To support this claim Complainant has provide evidence that the resolving website is used for a competing shoe retail venture; Complainant has provide sufficient evidence of competition to support a finding of Policy ¶ 4(b)(iii) bad faith. *See Classic Metal Roofs, LLC v. Interlock Indus., Ltd.*, FA 724554 (Nat. Arb. Forum Aug. 1, 2006) (finding that the respondent registered and used the <classicmetalroofing.com> domain name in bad faith pursuant to Policy ¶ 4(b)(iii) by redirecting Internet users to the respondent's competing website).

Furthermore, Respondent's actions amount to typosquatting, and therefore support a finding of bad faith. The <sneakerhaed.net> domain name differs from the SNEAKERHEAD mark by simply transposing the "e" and the "a" in the mark. By attempting to profit from basic typographical errors on the part of Internet users, Respondent's actions amount to bad faith pursuant to Policy ¶ 4(a)(iii). *See Bank of Am. Corp. v. Tak Ume domains for sale*, FA 154528 (Nat. Arb.

Forum May 19, 2003) (holding that the practice of typosquatting “diverts Internet users who misspell Complainant’s mark to a website apparently owned by Respondent for Respondent’s commercial gain. ‘Typosquatting’ has been recognized as evidencing bad faith registration and use under Policy ¶ 4(b)(iv).”).

The Panel finds Complainant has satisfied Policy ¶ 4(a)(iii).

## 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 <**sneakerhaed.net**> domain name be **TRANSFERRED** from Respondent to Complainant.



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Honorable Bruce E. Meyerson  
Arbitrator

Bruce E. Meyerson, Panelist

Dated: October 21, 2014