

ADMINISTRATIVE PANEL DECISION

Sniffies, LLC v. Varun Dutt

Case No. D2023-2037

1. The Parties

The Complainant is Sniffies, LLC, United States of America ("United States" or "U.S."), represented by Hanson Bridgett LLP, United States.

The Respondent is Varun Dutt, India.

2. The Domain Name and Registrar

The disputed domain name <sniffiesgayapp.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 6, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name(s) which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 26, 2023, 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 amended Complaint on May 26, 2023. The Respondent sent informal communications to the Center on May 26, 2023. The Center sent a possible settlement communication on May 30, 2023, to which the parties did not respond.

The Center verified that the Complaint together with the amended 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 June 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2023. The Respondent did not submit any response. Accordingly, the Center proceeded to panel appointment on July 5, 2023.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on July 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 is based in Dover, in the state of Delaware in the U.S. Since February 2017, it has offered a SNIFFIES-branded online dating and social meetup platform marketed to the gay male market.

The Complainant provides a list of trademark registrations it owns for the SNIFFIES trademark in the United States and other jurisdictions including the European Union, the United Kingdom, Australia, Japan, Israel, and New Zealand. It provides registration certificates for the mark SNIFFIES in the United States, being No. 682819 with Registration date of August 16, 2022, in international Classes 38, 42, and 45; and No. 7039755 with Registration date of May 02, 2023 for goods in international Class 025.

The Complainant is the owner of the <sniffies.com> domain name and operates the website to which it resolves.

The disputed domain name was registered on April 18, 2023, and resolves to a website that mimics the Complainant's official online presence.

5. Parties' Contentions

A. Complainant

The Complainant says that as well as the trademark registrations in the mark SNIFFIES it also has strong common law rights in that mark in many jurisdictions where its platform is made available.

The Complainant contends that long before the Respondent registered the disputed domain name, and by virtue of its widespread use, promotion, and recognition, the SNIFFIES mark became a well-known symbol among the general public representing the Complainant and its goods and services. The Complainant further maintains that the Respondent registered the disputed domain name with prior actual knowledge and constructive notice of the Complainant's rights in and to its SNIFFIES trademark in a scheme to divert users to a website which appears to use that registered mark, the Complainant's copyright protected material, and what the Complainant refers to as a typosquatting domain name to deceive and divert customers to the Respondent's website when they are looking for the Complainant's services. The Respondent's website provides links that may also be fraudulent and/or lead to a scam.

The Complainant says that the disputed domain name incorporates the SNIFFIES mark in its entirety with the addition of the descriptive words "gay" and "app" which describe the Complainant's social platform and online dating service for the gay male market. It points out that the disputed domain name differs from the SNIFFIES trademark and the Complainant's <sniffies.com> domain name by just two descriptive words. The Complainant asserts that prior UDRP panels have consistently found that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to a mark will not alter the fact that the domain name at issue is confusingly similar to the mark in question. Accordingly, the Complainant says, the disputed domain name is virtually identical to and highly likely to cause consumer confusion with the Complainant's SNIFFIES trademark. Based on the character of the Respondent's conduct this must needs be intentional, the Complainant says.

The Complainant also asserts that the Respondent is not known by "sniffies" or "sniffiesgayapp" nor could the Respondent have developed any common-law trademark rights in what the Complainant says are its senior and well-known trademarks. The Respondent is not affiliated with the Complainant, and the

Complainant says that it has not licensed or permitted the Respondent to use the SNIFFIES trademark, any other of the Complainant's marks, or any domain names incorporating them.

The Complaint points out that the Respondent uses the disputed domain name to host a website titled "Sniffies Gay Dating App/Sniffies Official (Free Download)", which features the SNIFFIES logo and direct copies of the Complainant's original content available at "www.sniffies.com", including unauthorized replications of its copyright protected platform and photographs, and provides non-resolving links to "Download The App", purporting to download an app by Sniffies. However, the Complainant asserts that it does not offer a downloadable app or program of any sort, as its services are provided exclusively via a web platform. Accordingly, so the Complainant contends, it is impossible that the websites at the disputed domain name were established as part of a legitimate business. The Respondent is said to use the relevant content as a feint for establishing spurious legitimacy. The Complainant maintains that while the links do not currently resolve to any third-party website, based on the character of the Respondent's conduct, a reasonable inference can be made that these links are designed to lead to a scam or fraudulent website, or download links for malicious software. This is reinforced by other pages that feign being drafted by the Complainant.

The Complainant says that by virtue of established UDRP principles, the Respondent's conduct—in the form of illegitimate use of the Complainant's trademarks, or domain names incorporating those marks without license or permission from the Complainant—is *prima facie* evidence that the Respondent does not have rights or legitimate interests in the disputed domain name under Paragraph 4(c)(ii) of the Policy.

Furthermore, the Complainant contends that the Respondent cannot demonstrate rights or legitimate interests in the disputed domain name under Paragraph 4(c)(i) or 4(c)(iii) of the Policy because the Respondent neither uses it in connection with a *bona fide* offering of goods and services, nor in a non-commercial manner, nor in a manner that might be deemed a legitimate fair use. Rather, the Complainant says, the Respondent has only used the disputed domain name to deceive consumers who are seeking out the SNIFFIES service and to redirect them to the Respondent's website. This site contains links which purport to lead consumers to a downloadable SNIFFIES app ostensibly from the Complainant but that is in fact nonexistent.

The Complainant contends that the Respondent registered and used the disputed domain name in a deliberate attempt to deceive third parties as to its identity or connection with the Complainant, in order to disrupt the latter's legitimate business. This is made especially clear by the Respondent's uses of the Complainant's SNIFFIES trademarks and logo throughout the website to suggest that the Complainant has somehow approved or sponsored it.

The Complainant says that the false "Download the App" links alongside the Complainant's trademarks or logos displayed on the website to which the disputed domain name resolves are conclusive evidence of bad faith. Further, it says that impersonating a trademark owner and hiding its true identity behind the website is another indication of the Respondent's bad faith. The provision of a page titled "Download and Install the Sniffies App on Windows PC", which instructs users to "contact us through our Support page" and "Download and install Sniffies today and start meeting new people!" further reveals that the Respondent's sole motivation is to perpetrate a scam, the Complainant says.

Finally, the Complainant asserts that it is not aware of any evidence that the Respondent has used the disputed domain name for anything other than deceiving third parties with a spurious website for the purposes of diverting customers to external links now or in the future, potentially for the fraudulent purpose of signing users up for paid subscriptions to illusory services or downloading malicious software.

B. Respondent

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

The Respondent sent the following informal communication to the Center on May 26, 2023:

"I didn't know what the issue was but I found a domain issue on Google that I can't buy such domains that relate to Sniffies word. Okay. I removed this website and I no longer need this domain. Also, I assure you that I will not buy such a domain ahead of time."

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant obtained registered trademark rights in the mark SNIFFIES in the United States and in other jurisdictions before the registration date of the disputed domain name. The disputed domain name is not identical to the SNIFFIES registered trademark of the Complainant, but that mark is clearly visible and recognizable within it. The addition of the terms 'gay' and 'app' do not detract from that fact. That the registered mark of the Complainant is recognizable within the disputed domain name is in any case sufficient to meet the requirements of the first element.

Therefore, the Panel holds that the disputed domain name is confusingly similar to the SNIFFIES registered trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent sent an informal communication, but without replying to any of the contentions of the Complainant. Being named Varun Dutt, it is clear that the Respondent is not known by the term "SNIFFIES" or the disputed domain name, and there is no indication that the Respondent has acquired rights in such a distinctive term by any other legitimate means. There is no suggestion that the Respondent has registered or common law-based rights in the term "SNIFFIES" anywhere.

In any case, the use of a domain name that incorporates a third party's distinctive registered mark, for the sake of establishing a shadow website that purports to offer downloads emanating from the Complainant, is clearly a dishonest activity. The use of a privacy shield to hide the identity of the party engaging in this activity is a further indication of bad faith. All these actions do not vest rights in the Respondent, nor result in the recognition of some legitimate interest in retaining a disputed domain name. The Respondent has also not been licensed or authorized to use the SNIFFIES mark of the Complainant, or to set up an affiliated website, or provide the Complainant's services. There is no evidence before the Panel of any good faith or fair use of the disputed domain name.

Therefore, the Panel holds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

From the composition of the disputed domain name alone it can be inferred that the Respondent, at the time of registration of the disputed domain name, was well aware of the Complainant's SNIFFIES trademark and its proprietary character. The Respondent clearly knew the nature of the business the Complainant engages in by reference to its SNIFFIES trademark. The Respondent then also established a website to which the disputed domain name resolves, which was further elaborated to give the false impression of a legitimate connection with the Complainant. The Respondent went to the length of purporting to offer a downloadable app by which the SNIFFIES services were to be delivered, which was in reality entirely false. No doubt all this was inspired by a desire to create a false sense of legitimacy and thus comfort for unsuspecting internet users, for the sake of some financial benefit for the Respondent.

There is little doubt that the registration of the disputed domain name was an integral part of some fraudulent scheme thought up by the Respondent, which relied on appropriating the reputation and distinctiveness of the Complainant's SNIFFIES mark and its platform services.

Therefore, the Panel holds that the disputed domain name was registered and used in bad faith.

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 <sniffiesgayapp.com> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: July 24, 2023.