

ADMINISTRATIVE PANEL DECISION

Sleeptopia, Inc. v. Christopher Accely
Case No. D2023-2924

1. The Parties

Complainant is Sleeptopia, Inc., United States of America (“United States” or “U.S.”), represented by Hovey Williams LLP, United States.

Respondent is Christopher Accely, United States.

2. The Domain Name and Registrar

The disputed domain name <thesleeptopia.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 7, 2023. On July 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 11, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on July 17, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 20, 2023.

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 Respondent of the Complaint, and the proceedings commenced on July 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 15, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 22, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on August 28, 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 following facts appear from the Complaint and its attached Annexes, which have not been contested by Respondent, and which provide evidence sufficient to support:

Complainant is a leading provider of health related products and services in the field of sleep apnea, including sleep testing and diagnostic services, continuous positive airway pressure (CPAP) machines and masks for sleep apnea therapy under the mark SLEEPTOPIA (the “SLEEPTOPIA Mark”). Complainant employs a number of licensed doctors who specialize in sleep disorders and sleep therapy, and is committed to providing its patients with educational awareness and resources regarding sleep disorders, such as sleep apnea, and the most effective treatment available.

The SLEEPTOPIA Mark is protected by Complainant as a registered trademark for its sleep related products and services in the United States with the United States Patent and Trademark Office (“USPTO”), including, U.S. Trademark Registration No. 5983977, registered on February 11, 2020, for a range of sleep information and diagnostic services, and claiming a first use date of January 1, 2013.

Complainant also has established a website located at “www.sleepptopiainc.com”, which Complainant uses to provide, promote, and sell its sleep related products and services under the SLEEPTOPIA Mark (the “Official SLEEPTOPIA Mark Website”) operated by Complainant since February 14, 2013.

The disputed domain name was registered on November 21, 2022. As of the date of the filing of the Complaint, the disputed domain name resolved to an online store with a landing page that states “WELCOME TO SLEEPTOPIA”, selling sleep-related products competitive with Complainant’s products and services, including sleep masks, pillows, blankets, and sound machines. After the original Complaint was submitted and the Registrar was notified of this dispute, Respondent’s website was modified so that the disputed domain name currently directs users to an inactive, parked webpage.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Complainant contends that the disputed domain name is identical or confusingly similar to Complainant’s trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

The *onus* is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. the disputed domain name 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 disputed domain name; and
3. the disputed domain name has been registered and is being used in bad faith.

The Panel will deal with each of these requirements in turn.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The first element inquiry under the Policy has two strands. First, the Panel considers whether Complainant has demonstrated that it has UDRP-relevant rights in a trademark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). Secondly, the trademark concerned is compared to the disputed domain name, typically in a straightforward side-by-side comparison in order to determine whether the former is recognizable in the latter. During the comparison process, the generic Top-Level Domain (in this case, ".com") is usually disregarded as being required for technical purposes only. See, *Research in Motion Limited v Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#).

In the present case, the Panel is satisfied that Complainant has rights in its SLEEPTOPIA Mark as registered. The details of its relevant trademark registration are noted in the factual background section above and a copy of the registration issued to Complainant is in one of the annexes attached to its Complaint. Comparing its registration for the word mark to the Second Level of the disputed domain name, the Panel finds this to be confusingly similar and that the addition of "the" as a prefix to Complainant's mark does not prevent this confusing similarity. Complainant's mark is therefore clearly recognizable in the disputed domain name. There is no particular opposition from Respondent to Complainant's contentions on this topic.

In all of these circumstances, the Panel finds that the disputed domain name is identical to Complainant's mark and therefore that Complainant has carried its burden in terms of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Paragraph 4(c) of the Policy lists several ways in which Respondent may demonstrate rights or legitimate interests in the disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

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

The consensus of prior UDRP panel decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

In the present case, the Panel finds that Complainant has established the requisite *prima facie* case based on its submissions that Respondent is not commonly known by the disputed domain name, has received no permission or license to use Complainant's mark therein, is not using the disputed domain name in connection with a *bona fide* offering of goods or services, and that the disputed domain name refers to a website featuring Complainant's mark used to promote and sell sleep related products in competition with Complainant, which shows Respondent is passing itself off so as to misappropriate the goodwill developed in Complainant's rights in the SLEEPTOPIA Mark by operating a website with the intent to mislead Internet users into thinking there is an affiliation between Complainant and Respondent, which cannot be considered a legitimate noncommercial or fair use of the disputed domain name. See, e.g., *Chrome Hearts LLC v. Tony Lou*, WIPO Case No. [D2009-0964](#). In these circumstances, the burden of production shifts to Respondent to bring forward evidence of its rights and legitimate interests in the disputed domain name.

Respondent has failed to file any Response in this administrative proceeding and has put forward no submissions or evidence demonstrating any rights or legitimate interests in the disputed domain name. There is no evidence before the Panel indicating that any of the items in paragraph 4(c) of the Policy might be relevant in the circumstances of this case.

In particular, given the distinctive nature of Complainant's SLEEPTOPIA Mark, there is no suggestion that Respondent could be making a *bona fide* offering of goods and services or be commonly known by the disputed domain name. See *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Equally, the use of the disputed domain name in connection with a website which copies Complainant's SLEEPTOPIA Mark in an attempt to clearly impersonate Complainant and offers competing sleep related products, which relate to Complainant's line of business, could not be regarded as a legitimate noncommercial or fair use in this case. See *Accor v. Eren Atesmen*, WIPO Case No. [D2009-0701](#). Prior UDRP panels have also held that a respondent's modification of its website following notice from its registrar that a UDRP action has been filed against it supports a finding that a complainant has established a *prima facie* case. See *Guitar Center, Inc. v. Contact Privacy Inc. Customer 0156291006 / Nikolay CHAVDAROV, My Guitar Center*, WIPO Case No. [D2019-3092](#).

Accordingly, the Panel finds that Respondent has failed to rebut Complainant's *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. The second element under the Policy has been established.

C. Registered and Used in Bad Faith

For the reasons discussed under the previous ground, the Panel finds that Respondent registered and used the disputed domain name in bad faith. This finding is supported by the following circumstances. First, the Panel agrees with Complainant's supported allegation that Respondent has sought to pass itself off as Complainant for purposes of pursuing a fraudulent scheme on unsuspecting consumers based on Respondent's return address identified on products sold through Respondent's website which has been identified by several search engine sources to be affiliated with social media scams and fraudulent online stores; and by using Complainant's SLEEPTOPIA name and Mark featured on the landing page of Respondent's original website to divert Internet traffic from Complainant to Respondent and registering a domain name that is essentially identical to Complainant's SLEEPTOPIA Mark makes it clear that Respondent targeted Complainant.

Given the above, the Panel finds that Respondent must have known of Complainant and its business activities when Respondent registered and began using the disputed domain name in bad faith to take advantage of Complainant and its SLEEPTOPIA Mark.

While the disputed domain name may not be currently connected to an active website, prior UDRP panels have found that such non-use does not prevent a finding of bad faith when considering the totality of the circumstances. [WIPO Overview 3.0](#), section 3.3. Given the prior bad faith use, the notoriety and identical incorporation of the SLEEPTOPIA Mark in the disputed domain name by the unaffiliated Respondent, and the lack of any Response, the Panel finds that the current inactive holding of the disputed domain name does not prevent a finding of bad faith.

The Panel thus finds that Complainant has met the third limb 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 <thesleeptopia.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: September 6, 2023