

ADMINISTRATIVE PANEL DECISION

Future Motion, Inc. v. Wills Eldren
Case No. D2022-0232

1. The Parties

The Complainant is Future Motion, Inc., United States of America (“United States”), represented by Kolitch Romano LLP, United States.

The Respondent is Wills Eldren, United States.

2. The Domain Name and Registrar

The disputed domain name <onwheel-outlet.shop> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 24, 2022. On January 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 26, 2022, 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 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 January 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 18, 2022.

The Center appointed Jeffrey M. Samuels as the sole panelist in this matter on March 1, 2022. 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

Complainant Future Motions, Inc. is a well-known electric board sports company that sells a line of electric skateboards under the trademark ONEWHEEL, which it has used since at least as early as January 2014. Complainant sells its products around the world and its ONEWHEEL product has been the topic of numerous popular online magazines and blogs since its inception.

Complainant owns numerous trademark registrations for the ONEWHEEL mark in the United States and internationally. These include U.S. Registration Nos. 4622766 and 5953007 (registered October 14, 2014 and January 7, 2020, respectively) and International Registration Nos. 1227105 and 1260437 (registered August 26, 2014 and February 2, 2015, respectively).

The disputed domain name, <onwheel-outlet.shop>, was registered on August 20, 2021. Up until at least September 23, 2021, the disputed domain name resolved to a website that prominently displayed the ONEWHEEL mark and offered for sale lower-priced substitutes of Complainant's products. The disputed website was at least temporarily deactivated as of January 6, 2022.

5. Parties' Contentions

A. Complainant

Complainant submits that it has rights in its ONEWHEEL mark through ownership of trademark registrations for such mark, as well as its extensive use and promotion of such mark.

Complainant further argues that the disputed domain name is identical or confusingly similar to the ONEWHEEL mark. It notes that the disputed domain name largely incorporates the ONEWHEEL mark except for the omitted letter "e" in the "one" portion of the mark. The addition of the term "outlet" does not avoid a finding of confusing similarity, Complainant asserts, since such term is non-distinctive.

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name. Complainant points out that Respondent is not sponsored by or affiliated with Complainant and has not received any license, authorization, or permission from Complainant to use the ONEWHEEL mark in any manner, including in the disputed domain name. Moreover, to the best of Complainant's knowledge, Respondent is not commonly known by the disputed domain name. Complainant further contends:

"Overall, to the best of Complainant's knowledge, Respondent's use of the Domain Name [...] appears primarily to be for the purpose of disrupting and diverting the business of Complainant, and not for any legitimate interest or *bona fide* offering of goods and/or services. Respondent cannot claim any legitimate non-commercial or fair-use rights in the Domain Name. Instead, the purpose of the Domain Name's website is for commercial gain, and to capitalize on the reputation and goodwill associated with Complainant's ONEWHEEL mark."

With respect to the issue of bad faith registration and use, Complainant alleges, *inter alia*, that: (1) based on the popularity of Complainant and its ONEWHEEL mark, Respondent knew or should have known of Complainant and its ONEWHEEL mark at the time Respondent registered the disputed domain name; and (2) Respondent is intentionally attempting to attract, for commercial gain, Internet users to the disputed domain name's website by creating a likelihood of confusion as to the source, sponsorship affiliation, or endorsement of such website.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the ONE WHEEL trademark. As noted by Complainant, the disputed domain name largely incorporates the ONE WHEEL mark, except for the omission of the letter “e” in the word “one”. Such omission appears to be an intentional typographical error as the disputed domain name resolves to a website which prominently displays the ONE WHEEL mark. The addition of the term “outlet” to the disputed domain name does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), sections 1.8 and 1.9.

The Panel further finds that Complainant has rights in the ONE WHEEL mark. The evidence indicates that Complainant owns trademark registrations for such mark and has made extensive use of, and widely promoted, such mark since at least as early as January 2014.

B. Rights or Legitimate Interests

The Panel concludes that Complainant has sustained its burden of establishing that Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is authorized by Complainant to use the ONE WHEEL mark, or any variation thereof, in connection with a domain name or that Respondent is commonly known by the disputed domain name.

Nor is there any evidence that Respondent is using the domain name in connection with a *bona fide* offering of goods and/or services or is making a legitimate noncommercial or fair use of the domain name. Rather, the evidence indicates that, at least up until September 23, 2021, the disputed domain name resolved to a website that included reference to the ONE WHEEL mark in combination with copyrighted images of Complainant’s products and offered for sale apparent knockoffs, bearing Complainant’s ONE WHEEL mark and being offered for significant discounts, without any clear explanation regarding Respondent’s lack of relationship with Complainant.

C. Registered and Used in Bad Faith

The Panel concludes that the disputed domain name was registered and is being used in bad faith. The evidence supports a determination that, by registering the disputed domain name, Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion as to the source, sponsorship, endorsement, or affiliation of such site and of the goods found at such site. As found above, the disputed domain name consists of an intentional misspelling of the ONE WHEEL mark and resolves to a website that not only references Complainant’s mark but also offers for sale products that are most likely knockoffs of those offered for sale by Complainant (noting in particular that the goods are offered disproportionately below market value, including discounts of over 90 percent). Furthermore the Panel notes [WIPO Overview 3.0](#), section 3.1.4, which states: “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly a domain name comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

The fact that, at the time of the filing of the instant complaint, the disputed domain name was inaccessible does not preclude a determination that the disputed domain name is being used in bad faith. See *Comerica Bank v. Steve Walter*, WIPO Case No. [D2015-0003](#) (holding that this element of the Policy was satisfied where a website previously located at a disputed domain name misleadingly suggested affiliation with the complainant, even though the domain name did not resolve to any website as of the date the complaint was filed. See also *Ingersoll-Rand Co. v. Frank Gully, d/b/a Advcomren*, WIPO Case No. [D2000-0021](#) (a sufficiently proven one-time bad faith use is satisfactory).

There is also evidence that Respondent knew or should have known of Complainant and of its rights in the ONE WHEEL mark as of the time of registration of the disputed domain name. As noted by Complainant, its ONE WHEEL mark was heavily advertised and promoted as of the time of registration of the disputed domain name. Moreover, the disputed domain name leads to a website that offers for sale products similar to those sold by Complainant.

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 <onwheel-outlet.shop> be transferred to the Complainant.

/Jeffrey M. Samuels/

Jeffrey M. Samuels

Sole Panelist

Date: March 15, 2022