

## **ADMINISTRATIVE PANEL DECISION**

Kramer America, Inc. v. Eugeniy Alyamin

Case No. D2022-0340

### **1. The Parties**

The Complainant is Kramer America, Inc., United States of America (“United States”), represented by Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., United States.

The Respondent is Eugeniy Alyamin, Ukraine.

### **2. The Domain Name and Registrar**

The disputed domain name <smartlinermats.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 January 31, 2022. On February 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 8, 2022, 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 February 10, 2022.

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 February 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 21, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on May 3, 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.

On May 5, 2022, the Panel issued Procedural Order No. 1 suspending issuance of the decision notification to the parties in accordance with paragraph 10(a) and 10(c) of the UDRP Rules.

#### **4. Further Procedural Considerations**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the courier was able to deliver the written notice to the Respondent's address in Ukraine, and the Complaint was delivered to the Respondent's email address provided by the Registrar.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, GoDaddy.com, LLC, is in the United States of America.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no doubt whatsoever that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark and misleading consumers.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

#### **5. Factual Background**

Since 2017, the Complainant has supplied vehicle floor mats in North, Central, and South America under the mark SMARTLINER.

The Complainant's website is located at "www.smartliner-usa.com".

The Complainant owns United States Trademark No. 5376469 for SMARTLINER, filed October 28, 2016, registered January 9, 2018, in Classes 12 and 27.

The disputed domain name was registered on March 9, 2019.

As of January 31, 2022, the disputed domain name resolved to a website branded "SMARTLINER" that contained detailed information about the Complainant's products, described as "Smartliner floor mats", and offered them for sale via "SHOP NOW" buttons with affiliate links to Amazon. The title of the home page (visible in search engines) stated "Smartliner Floor Mats | Max Protection by Official Manufacturer". The site included a comparison between the Complainant's products and those of Weathertech, a competitor of the Complainant.

The footer of the website displayed a New York address and stated: "SmartLineremats.com is an independent enthusiast website and is not affiliated with or endorsed by any other manufacturers and its content is solely for informational purposes. All manufacturer names, symbols, and descriptions, used in our images and text are used for identification purposes only. It is neither inferred nor implied that any item mentioned by SmartLineremats.com is a product authorized by or in any way connected with any products/vehicle manufacturers displayed on this page."

## **6. Parties' Contentions**

### **A. Complainant**

The following is a summary of the Complainant's contentions.

By virtue of the Complainant's significant use and promotion of its mark, consumers have come to recognise it as a valuable asset of the Complainant, and synonymous with its high-quality goods.

The disputed domain name is confusingly similar to the Complainant's trade mark. The addition of the descriptive term "mats" is insufficient to differentiate the disputed domain name and the trade mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant has not authorised the Respondent to use its mark.

The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, the Respondent is attempting to hold itself out as the Complainant in order to obtain commission via affiliate links.

The disputed domain name was registered and is being used in bad faith.

The Respondent clearly has actual knowledge of the Complainant because it is offering the Complainant's products for sale.

The Respondent using the disputed domain name which is confusingly similar to the Complainant's mark to mislead Internet users and attract them to the Respondent's own website for commercial gain.

Furthermore, the Respondent's website is likely to deceive the Complainant's customers, including by use of the Complainant's branding and mark, as well as reference to the Respondent being the "Official Manufacturer".

### **B. Respondent**

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

## **7. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

## A. Identical or Confusingly Similar

The Complainant has established registered rights in the mark SMARTLINER, as well as unregistered trade mark rights deriving from the Complainant's use of that mark.

Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the Complainant's distinctive trade mark is recognisable within the disputed domain name and, accordingly, the addition of the descriptive term "mats" does not prevent a finding of confusing similarity.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

## B. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the Respondent is promoting the Complainant's own goods and offering them for sale via affiliate links. In the Panel's view, it is appropriate to approach this as a reseller case. The consensus view of UDRP panels – as expressed in section 2.8 of [WIPO Overview 3.0](#) – is that to establish a *bona fide* offering of goods or services in such circumstances, a respondent must comply with certain conditions (the "Oki Data requirements").

In this case, the Panel considers that the Respondent has failed to comply with the *Oki Data* requirements to accurately and prominently disclose the Respondent's relationship with the Complainant.

First, the Panel notes that the disputed domain name does not signal the reseller relationship; rather, it merely comprises the Complainant's mark plus a descriptive term referable to the kind of goods supplied by the Complainant.

Also, the Respondent's website creates the impression that it is officially associated with the Complainant. The site is branded with the Complainant's trade mark SMARTLINER and includes a description of the Respondent as the "Official Manufacturer".

In the Panel's view, the Respondent cannot rely on the disclaimer, which is far from prominent and unlikely to be seen by most users of the site. Furthermore, the disclaimer gives no information whatsoever as to the identity of the operator of the website. The disclaimer is also incorrect in that the Complainant's name is not being used merely "for informational purposes" but rather to enable the Respondent to profit from the sale of the Complainant's products via affiliate links; and the claim to be "an independent enthusiast website" is contradicted by the Respondent's above-mentioned description of itself as: "Official Manufacturer". The Panel finds that the Respondent has not undertaken sufficient steps to avoid causing confusion to Internet users.

Accordingly, the Panel considers that the Respondent's use of the disputed domain name cannot be said to be *bona fide*.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

As explained in section 7B above, the Panel considers that the Respondent failed to comply with the *Oki Data* requirements in that it used the disputed domain name for a website that did not accurately and prominently disclose the Respondent's relationship with the trade mark holder.

In the Panel's view, paragraph 4(b)(iv) of the Policy applies in these circumstances. The Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark.

For reasons explained above, the Panel considers that the disclaimer does not assist the Respondent.

In any case, section 3.7 of the [WIPO Overview 3.0](#) explains that where, as here, the overall circumstances of a case point to a respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith. Indeed, in such cases UDRP panels may consider the respondent's use of a disclaimer as an admission by the respondent that users may be confused. This Panel does indeed treat the disclaimer as such an admission.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) of the Policy.

### **8. 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 <smartlinermats.com> be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: July 28, 2022