

## **ADMINISTRATIVE PANEL DECISION**

Depeche S.r.l v. Super Privacy Service LTD c/o Dynadot / Anil Sabanci  
Case No. D2022-0403

### **1. The Parties**

The Complainant is Depeche S.r.l, Italy, represented by Spheriens Avvocati, Italy.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America / Anil Sabanci, Turkey.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 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 9, 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 14, 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 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 16, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on April 22, 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**

The Complainant is an Italian company active in the business of manufacturing and marketing of high-end fashion clothing, footwear and accessories. Established in 2000, the Complainant has more than 600 retail stores all over Italy and Europe, and also strong online presence.

Among others the Complainant is owner of the International Trademark Registration (“IR”) No. 1578812 for the word mark ANIYE registered on November 30, 2020, for goods and services of classes 3, 9, 18, 25 and 35 of the Nice Agreement Concerning the International Classification of Good and Services for the Purpose of the Registration of Marks.

In November of 2021 the Complainant launched a new collection under the brand name “Aniye Records”, backed by extensive promotional campaign on major social media platforms in partnership with a globally popular Italian rock band Maneskin, winners of the 2021 Eurovision Song Contest and Best Rock Award at the 2021 MTV EMA.

Shortly thereafter, on December 17, 2021, the Complainant filed trademark applications in Italy and in the European Union for the mark “Aniye Records”, and it is now the owner of the European Union Trademark No. 018624305 for the figurative mark ANIYE RECORDS, registered on April 28, 2022, for goods and serviced of classes 3, 9,, 14, 18 and 25 of the Nice Agreement Concerning the International Classification of Good and Services for the Purpose of the Registration of Marks. On December 17, 2021 the Complainant has filed trademark application for the same mark in Italy, which is pending under application number 302021000205739.

The disputed domain name was registered on December 17, 2021, and resolved to a blank landing page lacking any content, apart from a message that it was for sale for USD 25,000. At the time of rendering of the decision the disputed domain name did not resolve an active website.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to its ANIYE trademark since it reproduces the trademark in its entirety.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name shortly after the launch and promotion of its new collection under the brand name “Aniye Records”, which suggests the Respondent’s knowledge of it at the time of registration. In addition, the Respondent’s intent to sell the disputed domain name for an amount well exceeding the out of pocket costs and the Respondent’s past involvement in abusive domain name registrations is further evidence of the Respondent’s bad faith.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

##### **B. Respondent**

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the ANIYE trademark and for the purpose of this proceeding the Panel establishes that the IR No. 1578812 satisfies the requirement of having trademark rights for the purpose of the Policy. The Panel further recognizes that at the time of rendering the present decision, the Complainant also has a now registered right in the trademark ANIYE RECORDS.

Having determined the presence of the Complainant's trademark rights, the Panel next assessed whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. If so, the disputed domain name is normally considered confusing similar to that mark for the purposes of UDRP standing. See section 1.7 of the [WIPO Overview 3.0](#).

According to section 1.8 of the WPO Overview 3.0, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

The disputed domain name, when compared to the Complainant's ANIYE trademark, contains the whole of the Complainant's ANIYE trademark, which is easily recognizable in the disputed domain name. In view of the Panel, the addition of the term "records" is not sufficient to avoid a finding of confusing similarity with the Complainant's ANIYE trademark. In addition, if the disputed domain name is compared to the Complainant's ANIYE RECORDS trademark, the Panel finds that the disputed domain name is identical to such trademark.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain (“TLD”) in a domain name (in this case “com”) is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The Panel finds that the disputed domain name is identical or confusingly similar to the Complainant’s trademarks and that requirement of paragraph 4(a)(i) of the Policy is satisfied.

## **B. Rights or Legitimate Interests**

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds well-established rights in the ANIYE and ANIYE RECORDS trademarks.

The Respondent is not a licensee or distributor of the Complainant. The Respondent is not affiliated with the Complainant in any way. The Complainant has not granted any authorization for the Respondent to make use of its ANIYE trademark, in a domain name or otherwise and its prior rights in the trademark precede the date of registration of the disputed domain name.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 the 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.

The Respondent chose not to respond to the Complaint, to the facts and circumstances brought forward by the Complainant. By doing so, the Respondent failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant’s *prima facie* case.

According to the documentary evidence submitted, the Respondent acquired and parked the disputed domain name solely trying to re-sell it (for USD 25,000), most likely to the Complainant, the owner of not only the trademark comprising the distinctive and dominant portion of the disputed domain name, but of the pending (at the time of the registration of the disputed domain name) trademark applications for the unique mark identical with the disputed domain name as well. Such use, noting the composition of the disputed domain name, does not constitute a right or legitimate interest in the disputed domain name under paragraphs 4(c)(i)-(iii) of the Policy.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

### C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

In view of the Panel, the following facts and circumstances indicate that the Respondent has registered and is using the disputed domain name with intent to unlawfully profit in some fashion from or otherwise target the Complainant and its trademark rights pursuant to paragraphs 4(b)(i) and 4(b)(ii) of the Policy:

- the ANIYE and ANIYE RECORDS trademarks are distinctive and unique to the Complainant, thus a basic Internet search against the disputed domain name returns solely the Complainant and its businesses;
- the Respondent failed to provide any explanation for use of the Complainant's trademarks in the disputed domain name and the Panel infers on balance that the Respondent knew of the Complainant's business and its trademark rights when it registered the disputed domain name and that it proceeded with bad faith intent to deliberately target such rights; and
- the Respondent has recently been condemned in another UDRP decision for registering a number of trademark-abusive domain names (see *Gilead Sciences Ireland UC v. Super Privacy Service LTD c/o Dynadot / Anil Sabanci / Adnan Ercan*, WIPO Case No. [D2021-0736](#)).

The facts and circumstances surrounding registration of these domain names by the Respondent are strikingly similar. Clearly, the Respondent targets not only distinctive trademarks of others, but also trademark rights based on applications for marks coined by and being unique to the respective trademark owners prior to registration of the domain names and then offers them for sale for amounts well exceeding the out-of-pocket costs related to the domain names.

It's not the number of trademarks involved, but the identical nature of facts and circumstances of these cases that convinces the Panel that the Respondent's conduct regarding registration of the disputed domain name is not an isolated event but rather a pattern of conduct in the sense of paragraph 4(b)(ii) of the Policy.

The fact that the disputed domain name currently resolves to inactive website does not alter the Panel's conclusion. According to section 3.3 of the [WIPO Overview 3.0](#), passive holding of a disputed domain name does not prevent a finding of bad faith.

For the reasons set out above, the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied.

## 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 <aniyerecords.com> be transferred to the Complainant.

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: May 4, 2022