

ADMINISTRATIVE PANEL DECISION

**UNISTELLAR v. Contact Privacy Inc. Customer 0164412292 / cc ww,
Unistellar.Store
Case No. D2022-2258**

1. The Parties

The Complainant is UNISTELLAR, France, represented by ANNABRAND - Intellectual Property Counsel, France.

The Respondent is Contact Privacy Inc. Customer 0164412292, Canada / cc ww, Unistellar.Store, France.

2. The Domain Name and Registrar

The disputed domain name <unistellar.store> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 21, 2022. On June 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 June 29, 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 amendment to the Complaint on July 4, 2022, and sent a clarification regarding the Mutual Jurisdiction on July 6, 2022.

The Center verified that the Complaint together with the amendment to 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 July 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 26, 2022. The Respondent did not submit any response. Accordingly,

the Center notified the Respondent's default on July 28, 2022. On August 2, 2022, the Center received an email communication from the Registrar.¹

The Center appointed William Lobelson as the sole panelist in this matter on August 4, 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 a French manufacturer of telescopes. It owns and uses a number of trademark registrations for UNISTELLAR:

- European Union Trade Mark No. 018340559 UNISTELLAR of November 19, 2020, covering classes 9, 35, 38, 42, and 45
- International Trademark No. 1611499 UNISTELLAR of November 30, 2020, covering classes 9, 35, 38, 42, and 45
- International Trademark No. 1362731 UNISTELLAR & device, of June 12, 2017, covering class 9.

The disputed domain name is <unistellar.store> and was registered on May 16, 2022. It routes to an active website where the Complainant's products are displayed which, apparently, may be won through a lottery game.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its earlier trademarks, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith. The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(a)(i));

¹ The Registrar forwarded a communication in which the Respondent or someone connected to the Respondent asked the Registrar, "hi whats the problem on the domain name". In response, the Registrar replied, "you may read the complaint in the attached" (attaching the Complaint).

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(a)(ii)); and

(iii) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

A. Identical or Confusingly Similar

The Complainant is the owner of numerous UNISTELLAR trademarks.

The disputed domain name is <unistellar.store>. It reproduces the Complainant's trademark in its entirety.

The addition of the generic Top-Level Domain ("gTLD") ".store" does not prevent a finding of confusing similarity.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP, paragraph 4(c) include the following:

(i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods and services;

(ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel notes that the Respondent has not filed a response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Complainant further claims that the Respondent is not known under the disputed domain name, does not own any proprietary rights in the name "unistellar" and does not make any *bona fide* use - neither commercial nor noncommercial, of the same.

The Complainant highlights that the disputed domain name routes towards an active website where its genuine products are exhibited. A comparison of the Complainant's website and the Respondent's (as per screenshots supplied by the Complainant) reflects that some images and photographs of the Complainant's products, as published in its own website, are reproduced in the Respondent's.

Still, the Complainant claims that the Respondent is not engaged in a *bona fide* commercial use of the disputed domain name for its website would be fictitious (the Complainant uses the term "scam", presumably to indicate that the Respondent would not run any real business) and that, in any case, should actual sales be performed, the products offered for sale by the Respondent would necessarily be counterfeits.

The Complainant justifies this contention by underlining that the sale price of the goods on the Respondent website is far less expensive as the genuine goods. While the Complainant's genuine goods are offered for sale at a price between USD 3,000 and USD 5,000, the goods displayed on the Respondent's website are offered at a price of USD 12,99.

After examining the screenshots of the Respondent's website, as supplied by the Complainant, the Panel observes that USD 12,99 is not a sale price for the goods, but a price to be paid to take part in a lottery, where the Complainant's goods may be won.

In any event, the Panel also notices that the disputed domain name is formed exclusively with the Complainant's trademark (*i.e.*, it is inherently misleading), and that the related website does not contain any disclaimer that the same is not run by the Complainant, as sole trademark owner and manufacturer of the trademarked products.

Even if the Respondent was an unauthorized but legitimate reseller of the Complainant's goods, it should have inserted in its website a clear disclaimer informing the public that it is not the manufacturer of the good, but only a distributor, all the more since the disputed domain name <unistellar.store> induces that the same is related to the official online store of the Complainant (see section 2.5.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is a consensus view among UDRP panels that a reseller or distributor can be making a *bona fide* offering of goods and services and thus have a legitimate interest in the domain name if its use meets certain requirements. These requirements normally include the actual offering of goods and services at issue, the use of the site to sell only the trademarked goods, and the site's accurately and prominently disclosing the registrant's relationship with the trademark holder.

See: *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), <okidataparts.com>; and *ITT Manufacturing Enterprises, Inc., ITT Corporation v. Douglas Nicoll, Differential Pressure Instruments, Inc.*, WIPO Case No. [D2008-0936](#), <ittbarton.com>.

In the present matter, in the absence of any disclaimer and the nature of the disputed domain name, and taking into account the contentions of the Complainant, that the Respondent has not contested, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

There is no doubt in the present matter that the Respondent had the Complainant's trademark in mind when it registered the disputed domain name, as the Respondent's website does exhibit the Complainant products and reproduces images, texts and photographs taken from the Complainant's website.

The Panel further observes that the Respondent used a privacy registration service, and finds many inconsistencies in the information published on the Respondent's website.

It is a consensus view among panels that although use of a privacy or proxy registration service is not in and of itself an indication of bad faith, the manner in which such service is used can in certain circumstances constitute a factor indicating bad faith. For example, registrant use of a privacy service in combination with provision of incomplete contact information to such service or a continued concealment of the "true" or "underlying" registrant may be evidence of bad faith.

From the information available on the Respondent's website, the Respondent would be a Unistellar.store company, domiciled in France. But its phone number corresponds to a Dutch number, while the Terms and Conditions published on the website refer to German Law.

It is also noted that the telefax communication that the Center tried to send to the Respondent's number failed, the said number being apparently inactive. That the email communications that the Center also tried to serve to the two email addresses indicated in the Respondent's website, namely "[...@unistellar.store]" and "[...]spacemate@info.com" also failed, the said addresses being also inactive. That the DHL expedition that the Center sent to the Respondent's address could not be delivered.

From the above, the Panel is able to conclude that the Respondent is concealing its identity and has provided inaccurate details not only when it sought to register the disputed domain name but also on the website to which the disputed domain name directs, thus making impossible for Internet users to make contact with it.

It is also noted that the Respondent's website is confusing as it can be construed by the Internet users as the genuine online store of the Complainant. As stated above, the said website does not contain any disclaimer informing the public that the Respondent is not the original manufacturer of the trademarked goods. Besides, its website does not seem to offer the goods for sale, but only to run a lottery where the said goods may be won, against the payment of a USD 12,99 price. Moreover, the disputed domain name is inherently misleading.

The likelihood that this lottery business run under the disputed domain name is fictitious is high.

The Respondent is thus making a misleading and possible fraudulent use of the Complainant's trademarks and images of products, with a view to diverting traffic to its own profit.

For all above reasons, the Panel finds that the disputed domain name has been registered and is being 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, <unistellar.store> be transferred to the Complainant.

/William Lobelson/

William Lobelson

Sole Panelist

Date: August 11, 2022