

ADMINISTRATIVE PANEL DECISION

ABG-Tretorn, LLC v. Client Care, Web Commerce Communications Limited
Case No. D2022-2614

1. The Parties

The Complainant is ABG-Tretorn, LLC, United States of America (“United States”), represented by Authentic Brands Group, United States.

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <tretornnederland.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 18, 2022. On July 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 21, 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 July 25, 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 26, 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 August 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 23, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on August 31, 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 and its predecessors have supplied shoes and other products under the Tretorn brand for over a century.

The Complainant owns many trade marks for TRETORN including European Union trade mark no. 910240, filed on August 19, 1998, registered on November 26, 2009, in classes 18, 25, and 28.

The Complainant operates its own website at “www.tretorn.com”.

The disputed domain name was registered on August 8, 2021.

As of July 12, 2022, the disputed domain name resolved to a website branded with the Complainant’s logo and purporting to offer the Complainant’s products for sale.

5. Parties’ Contentions

A. Complainant

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

The Complainant’s trade mark is well known worldwide.

The disputed domain name is confusingly similar to the Complainant’s trade mark, as it consists of that trade mark, which is recognisable within the disputed domain name, plus the geographical term “Nederland”.

The Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant has not authorised the Respondent to register the disputed domain name or to use its trade mark.

There is no evidence that the Respondent is using or plans to use the disputed domain name for a *bona fide* offering of goods or services. On the contrary, the Respondent has used the disputed domain name for a fake Tretorn website offering counterfeit goods, which is likely to trick consumers into thinking that the disputed domain name is connected with the Complainant.

Nor is there any evidence that the Respondent has been commonly known by the disputed domain name or that it is making a legitimate noncommercial or fair use of the disputed domain name.

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

The Respondent was well aware of the Complainant’s trade mark when it registered the disputed domain name, as shown by the Complainant’s extensive range of trade marks and the gap between registration of the trade marks and of the disputed domain name.

Use of a privacy shield is further evidence of bad faith.

Furthermore, the Respondent seems to be selling counterfeit goods on the website.

The Respondent has no reason to use the Complainant's mark other than to attract Internet users to its website for commercial gain.

B. Respondent

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

6. 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 TRETORN, as well as unregistered trade mark rights deriving from the Complainant's extensive and longstanding 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, geographical or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the disputed domain name consists of the Complainant's distinctive trade mark, which remains readily recognisable within the disputed domain name, plus an additional geographical term which does not prevent a finding of confusing similarity as explained above.

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 Panel notes, first, that the disputed domain name comprises the Complainant's distinctive mark plus a geographical term, which is generally seen as tending to suggest sponsorship or endorsement by the trade mark owner - see section 2.5.1 of [WIPO Overview 3.0](#).

Furthermore, the Respondent is purporting to resell the Complainant's own goods. 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 requirement to accurately and prominently disclose the Respondent's relationship with the trade mark holder, as explained in section 6C below.

The Complainant asserts that the Respondent is in fact selling counterfeit goods. If correct, then obviously the Respondent's conduct would be even less capable of constituting a *bona fide* offering.

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

The Panel considers that 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 in accordance with paragraph 4(b)(iv) of the Policy.

First, as noted under the second element, the disputed domain name is inherently misleading.

Second, the Respondent has used the disputed domain name for a website that impersonates the Complainant including by prominent use of the Complainant's mark/logo as well as by the lack of any prominent disclaimer.

Furthermore, the Respondent has engaged in pattern of such conduct. See *All Star Complainant.V., Converse, Inc. v. Domain Administrator, See PrivacyGuardian.org / Marion Kastor, Web Commerce Communications Limited, Client Care, Dahmann Monika*, WIPO Case No. [D2022-2686](#).

In these circumstances, the Panel has little difficulty in concluding that the Respondent registered and used the disputed domain name in bad faith.

As mentioned in section 6B above, if the Complainant is correct that the Respondent is in fact selling counterfeit goods, then the Respondent's conduct is even more egregious.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) 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, <retornnederland.com>, be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: September 14, 2022