

ADMINISTRATIVE PANEL DECISION

Soya Concept A/S v. Xiurong Ling
Case No. D2022-3307

1. The Parties

The Complainant is Soya Concept A/S, Denmark, represented by Zacco Denmark A/S, Denmark.

The Respondent is Xiurong Ling, China.

2. The Domain Name and Registrar

The disputed domain name <soyaconceptshop.com> (the “Disputed Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 6, 2022. On September 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 8, 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 September 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 4, 2022.

The Center appointed Nicholas Weston as the sole panelist in this matter on October 7, 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 company incorporated in Denmark founded in 2002 that operates an online fashion business and offers its womenswear for sale through a large number of international resellers, and in physical stores across more than 15 countries. The Complainant holds registrations for the trademark SOYACONCEPT and variations of it in numerous jurisdictions, including in the European Union pursuant to the Registration No. 006354435, registered on August 27, 2008.

The Complainant is also the owner of, *inter alia*, the domain name <soyaconcept.com>, which resolves to the company's official website.

The Disputed Domain Name <soyaconceptshop.com> was registered on May 18, 2022. The Complainant has supplied uncontested evidence that this Disputed Domain Name redirected to a website containing content lifted from the Complainant's official website and bearing images of womenswear copied from the Complainant's official website.

5. Parties' Contentions

A. Complainant

The Complainant cites its trademark registrations for SOYACONCEPT in various countries as *prima facie* evidence of ownership.

The Complainant submits that its rights in that trademark predate the Respondent's registration of the Disputed Domain Name. The Complainant also submits that the Disputed Domain Name "is identical to the Complainant's word mark for "SOYACONCEPT"... (and that) (t)he addition of the word "shop" at the end of the (Disputed) Domain Name does not prevent a finding of confusing similarity".

The Complainant contends that the Respondent has no authorized rights or legitimate interests in respect of the Disputed Domain Name and that "no license or authorization of any other kind has been given by the Complainant to the Respondent to use the trademark SOYACONCEPT."

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and the Rules. It submits that in view of the Respondent registering the Disputed Domain Name then using it "to promote and sell products covered by the Complainant's trademarks, shows that the Respondent cannot claim to have been using the trademark without being aware of the Complainant's rights to them" which evidences registration and use of the Disputed Domain Name in bad faith by deliberately targeting the Complainant.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and

(iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark SOYACONCEPT. The mark SOYACONCEPT was registered as a trademark in the European Union pursuant to the Registration No. 006354435, registered on August 27, 2008. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected URDP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the SOYACONCEPT trademark, the Panel observes that the Disputed Domain Name comprises: (a) an exact reproduction of the Complainant's SOYACONCEPT trademark; (b) followed by the word "shop"; (c) followed by the generic Top-Level Domain ("gTLD") ".com".

It is well established that the gTLD used as technical part of a domain name may be disregarded (see section 1.11.1 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: "soyaconceptshop".

It is also well-established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

This Panel accepts that the addition of the word "shop" does not preclude a finding of confusing similarity to the Complainant's trademark (see [WIPO Overview 3.0](#), section 1.8).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it has not licensed, permitted or authorized the Respondent to use the Complainant's trademark or to sell its products and for those reasons, the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that "by using authentic products images which are copyright of the Complainant..., and images which are copyright of the Complainant's resellers... the Respondent is indeed attempting to create the impression that the (Disputed) Domain Name and Website are connected to, or sponsored by, the Complainant".

This Panel accepts that the Respondent is not an authorized reseller with a legitimate interest in a domain name incorporating a Complainant's mark, and there is no disclaimer on the website the Disputed Domain Name resolve to, therefore it cannot meet the tests set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Nor, alternatively, is the Respondent commonly known by either of the Disputed Domain Name.

The composition of the Disputed Domain Name consists of the Complainant's trademark with the word "shop" added. In this Panel's view, the conduct does not support a finding of any rights or legitimate interests. In this case, the Panel finds that the Respondent is engaging in an illegitimate commercial use of the Disputed Domain Name by suggesting some association with the Complainant and misleading consumers who are seeking out the Complainant's mark SOYACONCEPT to opportunistically divert Internet traffic to its web page.

The Panel finds the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and therefore finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy that a complainant must also demonstrate is that the disputed domain name in question has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The evidence supports a finding that the Respondent has registered and used the Disputed Domain Name in bad faith.

On the issue of registration, taking into account the composition of the Disputed Domain Name and the content of the website it resolves to, the Panel is satisfied that the Respondent knew of the Complainant's trademark SOYACONCEPT and deliberately targeted the Complainant when it registered the Disputed Domain Name (see [WIPO Overview 3.0](#), section 3.2.2).

On the issue of use, the uncontradicted evidence of record is that the Disputed Domain Name was used to resolve to a website displaying "authentic products images which are copyright of the Complainant". In line with prior UDRP panel decisions, the Panel finds that this misconduct is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4).

This Panel finds that the Respondent has taken the Complainant's trademark SOYACONCEPT and incorporated it in the Disputed Domain Name, together with the word "shop", without the Complainant's consent or authorization, for the purpose of capitalizing on the reputation of the trademark by diverting Internet users for commercial gain to its website which falls into the meaning of bad faith under paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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 <soyaconceptshop.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: October 12, 2022