ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
ABG-Tretorn, LLC v. Client Care, Web Commerce Communications Limited
Case No. D2023-0299

1. The Parties

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

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

2. The Domain Name and Registrar

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

3. Procedural History

Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 23, 2023. On January 24, 2023, Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 28, 2023, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to Complainant on February 2, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on February 2, 2023. In response to a clarification request from the Center, the Complainant filed a second amended Complaint on February 7, 2023.

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 Respondent of the Complaint, and the proceedings commenced on February 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 2, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on March 6, 2023.

Center appointed Gabriel F. Leonardos as the sole panelist in this matter on March 15, 2023. Panel finds that it was properly constituted. 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

Complainant is ABG-Tretorn, LLC, owner of the mark TRETORN, a Swedish outdoor-lifestyle brand.

Complainant owns a wide portfolio of international trademarks, including trademarks registered for the Australian jurisdiction, such as:

Registration No.	Trademark	Jurisdiction	International Class	Date of Registration
747 228	TRETORN	International	18, 25, 28	December 8, 2000

The disputed domain name was registered on August 29, 2022, and it resolves to a webpage, which supposedly sells Complainant's official products.

5. Parties' Contentions

A. Complainant

Complainant pleads that the disputed domain name is confusingly similar to the registered trademark TRETORN, since it fully incorporates Complainant's trademark TRETORN.

Complainant affirms that the disputed domain name uses the trademark TRETORN in its entirety with the addition of the geographic indicator "australias"– which would not avoid a confusingly similarity between the disputed domain name and Complainant.

Therefore, according to Complainant, the disputed domain name is confusingly similar with Complainant's trademark TRETORN, fulfilling paragraph 4(a)(i) of the Policy and paragraphs 3(b)(viii) and 3(b)(ix)(1) of the Rules.

In addition, Complainant states that Respondent would not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant's trademark TRETORN as a domain name nor is Respondent associated with Complainant.

Complainant observes that Respondent does not make a legitimate noncommercial fair use of the disputed domain name, as it would be used to sell Complainant's products (counterfeit products, according to Complainant) in an unauthorized way and suggest a non-existent affiliation with Complainant's business. Complainant contends that the only apparent use of the disputed domain name is to fraudulently represent to consumers that Respondent is the "official" presence for Complainant.

This way, Complainant states that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(2) of the Rules have been fulfilled.

Finally, Complainant states that Respondent (i) was aware of the trademark TRETORN at the time of registration; (ii) uses the disputed domain name for commercial gain by selling competing and unauthorized

TRETORN goods; and (iii) has intentionally chosen the trademark TRETORN to divert Complainant's authentic customers into the disputed domain name to obtain profit.

Thus, according to Complainant, the requirements for the identification of a bad faith registration and use of the disputed domain name have been fulfilled, pursuant to paragraph 4(b)(iv) of the Policy.

Accordingly, Complainant requests transfer of the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

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

(ii) 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.

The burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the Complaint.

A. Identical or Confusingly Similar

Complainant has duly proven that it owns prior registered and unregistered rights for TRETORN, and that the disputed domain name is constituted by the trademark TRETORN in its entirety with the sole addition of the word "australias".

The addition of the term "australias" does not prevent a finding of confusing similarity with Complainant's trademark TRETORN, as such trademark is fully integrated, and recognizable, in the disputed domain name. See WIPO Overview on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.8.

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant's trademark TRETORN, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview 3.0 as follows: "[w]hile the overall burden of proof in UDRP proceedings is on the complainant, 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 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."

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant's contentions, the Panel has considered Complainant's unrebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

It should be noted that Respondent's lack of response (in the broader context of the case), according to the above-mentioned guidelines from WIPO Overview 3.0, section 2.1, suggests that Respondent has no rights or legitimate interests in the disputed domain name that it could put forward.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* offering of goods and services that could demonstrate rights or legitimate interests, since the evidence shows that the confusingly similar disputed domain name resolves to a website in which Complainant's products are allegedly sold by Respondent without clearance (as duly proven on Annex 6 to the Complaint).

Additionally, the Panel notes that the composition of the disputed domain name, wholly incorporating Complainant's trademark TRETORN with the sole addition of the word "australias", which is a misspelling of the geographic term "Australia", carries a risk of implied affiliation (WIPO Overview 3.0, section 2.5.1).

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, shall be evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that fully incorporates Complainant's trademark TRETORN. The Panel finds that Respondent was or should have been aware of Complainant's rights to the trademark TRETORN at the time of the registration – as Respondent uses the referred trademark in the content of the website to sell unauthorized products with the TRETORN trademark, proving that Respondent was more likely than not aware of Complainant's products and business at the time of registration.

In addition, the use of the disputed domain name in the present circumstances allows a finding of bad faith registration and use, since Respondent's website offers competing services under a domain name that wholly incorporates Complainant's trademark in an apparent attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant.

As concluded by the panel in *All-Clad Metalcrafters LLC v. Eugene Preston*, WIPO Case No. D2021-0799, the use of a domain name in which complainant's trademarks are being used to allegedly offer its products/services unauthorized is an indicative of bad faith:

"This point is further confirmed by Respondent's use of the Domain Names. The evidence indicates that Respondent has used the Domain Name <all-clad.store> in an attempt to impersonate Complainant, by displaying Complainant's logo and copying pictures of Complainant's products on Respondent's site, and then attempting to profit from the confusion by offering Complainant's products (or counterfeits) for sale at a discounted price. Respondent's actions create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of this Domain Name, and Respondent is using the fame of Complainant's ALL-CLAD mark to improperly increase traffic to the site linked to this Domain Name for Respondent's own commercial gain. Further, Respondent's use of the Domain Names <all-clad.club>, <allclad.online> and <all-cladus.online> disrupts Complainant's business because they are confusingly similar to Complainant's ALL-CLAD mark and the websites linked to them are being used to offer either competing or counterfeit goods. The Panel finds that Respondent, through this scheme, has intentionally attempted to attract for commercial gain Internet users to Respondent's online location by creating a likelihood of confusion with Complainant's ALL-CLAD marks as to the source, sponsorship, affiliation, and endorsement of Respondent's scheme."

The Panel finds that the circumstance of the present case allows a finding of bad faith in the registration and use of the disputed domain name, considering that Respondent tries to obtain commercial gain by using the inherently misleading disputed domain name to resolve to a webpage in which Complainant's products are supposedly available to purchase.

Moreover, the Panel finds it relevant that Respondent has not provided any evidence of good faith registration or use, or otherwise participated in this dispute. Complainant has put forward serious claims regarding the apparent bad faith use of the disputed domain name that the Panel would expect any legitimate party would seek to refute.

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) 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, <tretornaustralias.com> be transferred to Complainant.

/Gabriel F. Leonardos/
Gabriel F. Leonardos
Sole Panelist
Date: March 29, 2023