

ADMINISTRATIVE PANEL DECISION

Skims Body, Inc. v. 帆 钱

Case No. D2023-0454

1. The Parties

The Complainant is Skims Body, Inc., United States of America (“United States”), represented by Pearne & Gordon, LLP, United States.

The Respondent is 帆 钱, China.

2. The Domain Name and Registrar

The disputed domain name <skimsde.com> 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 January 31, 2023. On February 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2023, 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 February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 3, 2022.

The Center appointed Andrew F. Christie as the sole panelist in this matter on March 9, 2023. 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 trademark SKIMS, alone and in combination with other terms, has been used by the Complainant in connection with clothing and retail sales of clothing, including online retail sales, since as early as September 2019.

The Complainant is the owner of United States Trademark Registration No. 6754965 (filed on July 15, 2019, and registered on June 7, 2022) for the word trademark SKIMS, and United States Trademark Registration No. 6747497 (filed on August 26, 2019, and registered on May 31, 2022) for the stylized SKIMS trademark. The Complainant says it has over 100 trademarks globally that comprise or include the term SKIMS, either by itself, in conjunction with other words, in foreign characters, or with a logo, including in China where the Respondent apparently resides.

The Complainant conducts business through the domain name <skims.com>.

The disputed domain name was registered on May 19, 2022. The Complainant has provided a screenshot, taken on January 31, 2023, showing that the disputed domain name resolves to a website that has a banner heading displaying the Complainant's stylized SKIMS trademark, and which purportedly offers the Complainant's clothing for sale, using the Complainant's SKIMS word trademark. The website contains text in both the English language and the German language. The Complainant has also provided a screenshot, taken on January 31, 2023, of its own website at "www.skims.com", which bears similarity to the website resolving from the disputed domain name. At the time of this decision, the disputed domain name resolves to a website that appears very similar to the Respondent's website shown in the Complainant's screenshot.

5. Parties' Contentions

A. Complainant

The Complainant made the following contentions to establish that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The only difference between the disputed domain name and the Complainant's SKIMS trademark is the addition of "de" positioned after the Complainant's SKIMS trademark, and the generic Top-Level Domain ("gTLD") ".com". With respect to "de", this is the country-code for Germany. It is well established that gTLDs such as ".com" are generally disregarded when determining if there is identity or confusing similarity.

The Complainant made the following contentions to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not an authorized dealer or distributor of the Complainant's products, and is not sponsored or legitimately affiliated with the Complainant in any way. The Complainant has not given the Respondent permission to use the Complainant's trademark in a domain name or in any other manner. The Respondent has been using the disputed domain name for a website which displays, without authorization, products branded with the SKIMS trademark, and which reproduces the SKIMS trademark. Therefore, the Respondent clearly had knowledge of the Complainant's SKIMS trademark when it registered the disputed domain name. The added letters "de" refer to the country-code for Germany. The website shows the SKIMS trademark and products with German text, which implies that it is an authentic German site for the Complainant's products, and thus reinforces the intended reference to the Complainant's trademarks and products, while it deceptively leads consumers to believe that it is affiliated in some way with the Complainant.

The Complainant made the following contentions to establish that the disputed domain name was registered and is being used in bad faith. SKIMS is a coined term that has no common, descriptive, or dictionary meaning with respect to clothing and retail sales thereof, so it seems almost impossible that the Respondent chose the disputed domain name without reference to the Complainant or the Complainant's trademarks. It is clear from looking at the website resolving from the disputed domain name and the Complainant's website, that the Respondent is trying to pass its website off as being affiliated with the Complainant, and more

specifically, as a German site affiliated with the Complainant. The website resolving from the disputed domain name includes reproductions of the Complainant's trademarks, and photos taken from the Complainant's website. That website contains various inconsistencies, and the only purpose for it is to scam Internet users. Because the website resolving from the disputed domain name has been organized to look like a legitimate page selling the Complainant's products at a discount, it is clear that the Respondent knew of the Complainant's SKIMS trademark when it registered the disputed domain name, and purposely designed the website to appear as an authorized German seller of the Complainant's products. The Respondent registered the disputed domain name in bad faith to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's SKIMS trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Once the gTLD ".com" is ignored (which is appropriate in this case), the disputed domain name consists of the whole of the Complainant's registered word trademark SKIMS, with the addition of the letters "de". The Complainant's trademark is clearly recognizable within the disputed domain name. The addition of the letters "de", which many Internet users will read as a reference to the country-code abbreviation for Germany, does not avoid a finding of confusing similarity of the disputed domain name with the Complainant's trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent is not a licensee of the Complainant, is not otherwise affiliated with the Complainant, and has not been authorized by the Complainant to use its SKIMS trademarks. The Respondent has not provided any evidence that it has been commonly known by, or has made a *bona fide* use of, the disputed domain name, or that it has, for any other reason, rights or legitimate interests in the disputed domain name. The evidence provided by the Complainant shows that the disputed domain name has been used to resolve to a website displaying the Complainant's stylized SKIMS trademark, and purportedly offering for sale the Complainant's goods, using the Complainant's SKIMS word trademark.

Given the confusing similarity of the disputed domain name to the Complainant's word trademark, the absence of any relationship between the Respondent and the Complainant, and the risk of implied false affiliation with the Complainant, the Respondent's use of the disputed domain name is neither a *bona fide* use nor a legitimate noncommercial or fair use.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not rebutted this. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The disputed domain name was registered some years after the Complainant registered its SKIMS trademarks. It is inconceivable that the Respondent registered the disputed domain name ignorant of the existence of the Complainant's trademarks, given that the disputed domain name consists of the Complainant's word trademark with the mere addition of the letters "de", and that the Respondent used the

disputed domain name to resolve to a website displaying the Complainant's word and stylized trademarks and purporting to sell the Complainant's products. Given the Respondent's lack of rights or legitimate interests in the disputed domain name and the confusing similarity of the disputed domain name to the Complainant's word trademark, any use of the disputed domain name by the Respondent almost certainly implies an affiliation with the Complainant that does not exist. The Respondent's registration of the disputed domain name in these circumstances is a bad faith registration.

Furthermore, the evidence on the record provided by the Complainant indicates that the Respondent has used the disputed domain name in an attempt to attract, almost certainly for commercial gain, Internet users to a website by creating confusion in the minds of the public as to an association between the website and the Complainant. The Respondent's use of the disputed domain name in this manner is a bad faith use.

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, <skimsde.com>, be transferred to the Complainant.

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: March 23, 2023