

ADMINISTRATIVE PANEL DECISION

Tissot SA v. Huang Feng
Case No. D2023-0461

1. The Parties

The Complainant is Tissot SA, Switzerland, represented by The Swatch Group Ltd., Switzerland.

The Respondent is Huang Feng, China.

2. The Domain Name and Registrar

The disputed domain name <tissotusa.com> (the “Domain Name”) is registered with Top Pick Names LLC (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 Domain Name. On February 9, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Perfect Privacy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 2023, providing the registrant and contact information behind the privacy service disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on February 14, 2023.

The Center verified that the Complaint together with the amended 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 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 29, 2023.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on April 12, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a designer, manufacturer, seller and retailer of wristwatches. It was founded in 1853 and has grown to one of the world's most well-known watch brands. The Complainant's trademark is present in more than 160 countries through more than 14,000 points of sale and nearly 200 mono-brand stores. The Complainant has collected several awards and it has been named Official Timekeeper and Partner of many disciplines, such as Tour de France and the NBA.

The Complainant owns several trademarks for the TISSOT trademark, such as International trademark registration number 614931 registered on January 31, 1994. The Complainant has registered domain names, such as <tissot.us> and <tissotwatches.com>. TISSOT's fame has been recognized in former UDRP cases, such as *Tissot S.A. v. Domains By Proxy, LLC / Serkan Ergovan*, WIPO Case No. [D2018-2301](#).

The Respondent registered the Domain Name on May 23, 2022. At the time of the Complaint, the Domain Name resolved to a website displaying pornographic content. At the time of drafting the Decision, the Domain Name resolved first to a webpage in Chinese that appears to offer computer hardware and then onto a webpage with pornographic content.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name. The Complainant provides evidence of trademark registrations and argues that the Domain Name incorporates the Complainant's trademark in its entirety. The additional "usa" is not sufficient to dispel the confusing similarity under the first element.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent reproduces the Complainant's trademark in the Domain Name without any license or authorization from the Complainant. There are no signs that the Respondent has been commonly known by the Domain Name. The Domain Name resolves to a website displaying pornographic content, confirming the fact the Respondent is not making any legitimate use of the Domain Name. It is damaging the reputation of the Complainant.

It is likely that the Respondent was aware of the Complainant's rights prior to registering the Domain Name. The Domain Name directs to a pornographic content. It harms the goodwill and reputation of the Complainant. Numerous previous UDRP panels have found that a disputed domain name containing a well-established trademark which simply resolves to a pornographic website fails to constitute a *bona fide* offering of goods or services. The Respondent does not provide any disclaimer or disclosure of the (lacking) relationship with the Complainant. By registering and using a domain name comprising of the Complainant's well-known trademark and the country name "USA", the Respondent has clearly targeted the Complainant's customers and it diverts Internet users from the Complainant's websites.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The first element functions primarily as a standing requirement. The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has established that it has rights in the trademark TISSOT. In this case, the Domain Name incorporates the Complainant's trademark in its entirety, with "usa" added. The addition does not prevent a finding of confusing similarity between the Domain Name and the trademark. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"); see [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which a respondent may demonstrate rights or legitimate interests in a disputed domain name. While 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.

Based on the evidence, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. The linking to pornographic content is under the circumstances evidence of bad faith, see below.

The Panel finds that the Complainant has made out an un rebutted *prima facie* case. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The composition of the Domain Name makes it probable that the Respondent was aware the Complainant and its prior rights when the Respondent registered the Domain Name. The Domain Name fully incorporates the Complainant's well-known trademark together with the added geographical term "usa". Moreover, the Domain Name resolves to pornographic content. Based on the case file, the Panel cannot conceive a good faith use of the Domain name by the Respondent.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning 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 Domain Name <tissotusa.com> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: April 19, 2023