

ADMINISTRATIVE PANEL DECISION

Camilla Australia Pty Ltd. v. Qdeyg Pienf
Case No. D2023-1797

1. The Parties

The Complainant is Camilla Australia Pty Ltd., Australia, represented by Strategic IP Information Pte Ltd., Singapore.

The Respondent is Qdeyg Pienf, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <camillasale.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 April 21, 2023. On April 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 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 (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 2023, 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 amended Complaint on May 5, 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 May 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 16, 2023.

The Center appointed Mladen Vukmir as the sole panelist in this matter on June 21, 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 Panel has determined the following non-contested facts:

- (i) the Complainant is Camilla Australia Pty Ltd, an Australian company founded in 2009. The Complainant is a luxury fashion brand for women's wear, and its products are sold under the trademark CAMILLA;
- (ii) the Complainant is the owner of several trademark registrations that contain word Camilla, *inter alia*, the United States of America trademark registration no. 86810372 registered on August 22, 2017, and the Australian trademark registration no. 1443488 registered on August 18, 2011 (hereinafter: "CAMILLA trademarks");
- (iii) the Complainant is the registrant of the domain name <camilla.com>, registered on April 16, 1997;
- (iv) the Respondent is the registrant of the disputed domain name as disclosed by the Registrar;
- (v) the disputed domain name was registered on March 22, 2022. The website to which the disputed domain name resolves claims to offer CAMILLA products at heavily discounted prices, and has used the Complainant's brand imagery and copyright images.

5. Parties' Contentions

A. Complainant

The Complainant states that:

- (i) it was incorporated fourteen years ago under the name Camilla, is one of the world's leading fashion brand founded by Camilla Franks, it is best known for designing high fashion women's kaftans that are sold under the name Camilla, now has 20 boutiques in Australia, over 500 stockists globally, and is available in 55 countries worldwide. Over the years CAMILLA products have been worn by many celebrities all around the world. The Complainant has been using its CAMILLA trademark at least as early as 2009, CAMILLA trademark is in use worldwide, and is one of the most famous trademarks in the fashion world. The Complainant invests significantly in the promotion of CAMILLA trademark, maintains different social media accounts, and has collaborated with various brands;
- (ii) the disputed domain name reproduces the distinctive part of the Complainant's well-known CAMILLA trademark and corporate name. The disputed domain name is confusingly similar to CAMILLA trademark in which the Complainant has rights. Word "sale" that the Respondent added to the word "Camilla" does not serve to distinguish the disputed domain name from the Complainant's CAMILLA trademark, trade name, or registered domain name. The consumers are likely to deem the use of "sale" as a natural extension of the Complainant's CAMILLA trademark, with a suggestion that the disputed domain name offers legitimate discounted products, which is not the case;
- (iii) the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not been authorized by the Complainant to use CAMILLA trademark neither in whole nor in part, in any manner whatsoever, including as a domain name;
- (iv) The disputed domain name was registered and is being used in bad faith. The Complainant's CAMILLA trademark is well known, and the Respondent has no relationship with the Complainant. The Respondent is using the disputed domain name, that is confusingly similar to the Complainant's CAMILLA trademarks, to sell fake CAMILLA products. The website to which the disputed domain name redirects contains images of CAMILLA products, as an attempt to have the website associated with or endorsed by the Complainant. The Complainant states that it is no coincidence that the

Respondent chose and registered a domain name that is confusingly similar to the Complainant's official website "www.camilla.com", and that there can be no doubt that the Respondent was aware of the Complainant's CAMILLA trademark and trade name when the disputed domain name was chosen and registered.

B. Respondent

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

6. Discussion and Findings

The Panel now proceeds to consider this matter on the merits in light of the Complaint, the lack of the Response, the Policy, the Rules, the Supplemental Rules, and any rules and principles of law that it deems applicable pursuant to paragraph 15(a) of the Rules.

Paragraph 4(a) of the Policy provides that the Complainant must prove, with respect to the disputed domain name, each of the following:

- (i) the disputed domain name is confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the 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

A. Identical or Confusingly Similar

According to section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter: "[WIPO Overview 3.0](#)"), it is generally accepted that ownership of a registered trademark by a complainant is sufficient to satisfy the threshold requirement of having the trademark rights for purposes of standing to file a UDRP case.

The Complainant has proven that it is the owner of a number of CAMILLA trademarks registered before the competent authorities in United States of America and Australia. As such, these trademarks provide to the Complainant all the exclusive rights that are granted with such trademark registrations.

The threshold test for confusing similarity under the UDRP involves a reasoned but relatively straightforward comparison between the textual components of the relevant trademark and the disputed domain name. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. 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 section 1.7 of the [WIPO Overview 3.0](#)).

After performing a side-by-side comparison of the disputed domain name and the Complainant's CAMILLA trademarks, it is evident to this Panel that the disputed domain name incorporates the Complainant's CAMILLA trademark in its entirety. The only difference between the disputed domain name and the Complainant's CAMILLA trademarks is the addition of the word "sale" in the disputed domain name.

Where the trademark in question is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity between the disputed domain name and trademark in question. In this particular case, the added word "sale" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's CAMILLA trademarks.

Regarding the generic Top-Level Domain (“gTLD”), “.com” in the disputed domain name, as a standard registration requirement, should be disregarded under the confusing similarity test (section 1.11 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s CAMILLA trademark under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a number of circumstances which, without limitation, may be effective for the Respondent to demonstrate that it has the rights to, or legitimate interests in, the disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy. Those circumstances are:

“(i) Before any notice to [the respondent] of the dispute, [use by the respondent] of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) [Where the respondent] (as an individual, business, or other organization) [has] been commonly known by the domain name, even if [the respondent has] acquired no trademark or service mark rights; or

(iii) [Where the respondent is] making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

As noted by the previous UDRP panels on the onus of proof under paragraph 4(a)(ii) of the Policy, and as summarized in section 2.1 of the [WIPO Overview 3.0](#): “[...] 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.”

This Panel concludes that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, while the Respondent did not provide any response to the Complaint which would prove the Respondent’s rights or legitimate interests in the disputed domain name.

The Complainant has established that it is the owner of a number of CAMILLA trademarks and that it has used the same trademarks widely on the market. The Complainant has proved extensive and long lasting use of its CAMILLA trademarks.

The Panel finds that there is neither any relation, disclosed to the Panel, nor otherwise apparent from the records, between the Respondent and the Complainant, nor does it arise that the Complainant has ever licensed or otherwise permitted the Respondent to use its CAMILLA trademarks or to apply for or use any domain name incorporating the same trademarks.

There is no evidence that the Respondent has been commonly known by the disputed domain name. Also, there is no evidence in the case file or otherwise apparent to the Panel that the Respondent has been using the disputed domain name in connection with a *bona fide* offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name. As previously mentioned, the website to which the disputed domain name resolves claims to offer CAMILLA products at heavily discounted prices, and has used the Complainant’s brand imagery and copyright images.

The Respondent has failed to provide any substantive reply to the Complaint and accordingly failed to rebut the Complainant's *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the requirements set forth in paragraph 4(a)(ii) of the Policy have been fulfilled by the Complainant's making the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and by the Respondent's failing to produce any arguments or evidence to the contrary.

C. Registered and Used in Bad Faith

For the purpose of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

- (i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or
- (iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's website or location or of a product or service on the holder's website or location.

The Panel accepts the Complainant's arguments that the Respondent has registered and used the disputed domain name in bad faith.

As determined in earlier UDRP panel decisions, the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of [WIPO Overview 3.0](#)). This Panel's view is that the Complainant's CAMILLA trademarks are well known and distinctive, the Complainant has a worldwide reputation within the fashion industry, and it is highly unlikely that the Respondent was unaware of the Complainant and its well-known CAMILLA trademarks when it registered the disputed domain name.

The Respondent's website created under the disputed domain name claims to offer CAMILLA products at heavily discounted prices, it contains the Complainant's brand imagery, and copyright images, as an attempt to have this website associated with or endorsed by the Complainant. Noting that the Complainant's trademark predates the registration of the disputed domain name, that the website created under the disputed domain name contains the Complainant's brand imagery, while at the same time offers the Complainant's CAMILLA products on a heavily discounted prices, for which the Complainant states that are fake products, it is obvious to this Panel that the Respondent registered and is using the disputed domain name having in mind the Complainant and its CAMILLA brand.

The Respondent did not provide any evidence that it has rights and/or legitimate interests in a disputed domain name, nor did it present a credible evidence for registering and using the disputed domain name in good faith. Based on the evidence submitted by the Complainant, the Panel concludes that the Respondent

registered the disputed domain name based on the goodwill and reputation of the Complainant's CAMILLA trademarks. It is more likely than not that the Respondent's motive in relation to the registration and use of the disputed domain name was to take advantage from the Complainant's well-known trademark rights.

In this Panel's view, the Respondent has registered the disputed domain name to intentionally 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, affiliation or endorsement of the Respondent's website.

Given the above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith, and that the Complainant has fulfilled the third element.

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

/Mladen Vukmir/

Mladen Vukmir

Sole Panelist

Date: July 5, 2023