

ADMINISTRATIVE PANEL DECISION

The Ergo Baby Carrier, Inc. v. Kayli Kassulke
Case No. D2023-2818

1. The Parties

Complainant is The Ergo Baby Carrier, Inc., United States of America (“United States”), represented by K & G Law LLC, United States.

Respondent is Kayli Kassulke, United States.

2. The Domain Name and Registrar

The disputed domain name <ergobabylimited.com> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2023. On July 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 3, 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 (Sav.com, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on July 14, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 18, 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 Respondent of the Complaint, and the proceedings commenced on July 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 8, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 15, 2023.

The Center appointed Lorelei Ritchie as the sole panelist in this matter on August 25, 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

Complainant is a United States company based in California. For years prior to the registration of the disputed domain name, Complainant has been offering baby carriers, bags, and related products under the mark ERGOBABY.

Complainant owns various trademark registrations for the ERGOBABY mark in the United States, where Respondent lists an address of record. These include, among others, United States Registration No. 4178397 (registered July 24, 2012).

The disputed domain name was registered on May 9, 2023. Respondent has used the URL associated with the disputed domain name to resolve to a website that appears to mimic an official website of Complainant, including by offering products sold under the ERGOBABY mark, and by referencing information about Complainant in the “About” section, and displaying Complainant’s registered mark and logo. Complainant has not authorized any activities by Respondent, nor any use of its trademarks thereby.

5. Parties’ Contentions

A. Complainant

Complainant contends that (i) the disputed domain name is identical or confusingly similar to Complainant’s trademarks, (ii) Respondent has no rights or legitimate interests in the disputed domain name; and (iii) Respondent registered and is using the disputed domain name in bad faith.

Specifically, Complainant contends that it owns the ERGOBABY mark, which has garnered awards including from Good Housekeeping in 2022 and 2023. Complainant contends that Respondent has incorporated in full Complainant’s ERGOBABY mark into the disputed domain name, with the addition only of the term “limited”.

Complainant further contends that Respondent has used the disputed domain name to set up a website meant to lure in customers looking for Complainant and its Ergobaby products. Complainant further contends that Respondent has no rights or legitimate interests in the domain name registration and use of the disputed domain name. Rather, Complainant contends that Respondent has acted in bad faith in setting up a website, when Respondent clearly knew of Complainant’s rights, as exhibited by references to Complainant’s registered mark and logo. Complainant further alleges that Respondent has potentially engaged in a pattern of registering domain names in violation of the Policy.

B. Respondent

Respondent did not file a reply to Complainant’s contentions in this proceeding.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel must first determine whether the disputed domain name <ergobabylimited.com> is identical or confusingly similar to a trademark or service mark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy. The Panel finds that it is.

The disputed domain name incorporates in full Complainant’s ERGOBABY mark with the addition only of the dictionary term “limited”. Numerous UDRP panels have agreed that supplementing a trademark with dictionary terms does not prevent a finding of confusing similarity for purposes of satisfying this first prong of paragraph (4)(a)(i) of the Policy. See, for example, *Microsoft Corporation v. StepWeb*, WIPO Case No. [D2000-1500](#) (<microsofthome.com>); *Wal-Mart Stores, Inc. v. Horoshiy, Inc.*, WIPO Case

No. [D2004-0620](#) (<walmartbenefits.com>); *General Electric Company v. Recruiters*, WIPO Case No. [D2007-0584](#) (<ge-recruiting.com>).

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

B. Rights or Legitimate Interests

The Panel next considers whether Complainant has shown that Respondent has no “rights or legitimate interest” as must be proven to succeed in a UDRP dispute. Paragraph 4(c) of the Policy gives examples that might show rights or legitimate interests in a domain name. These examples include: (i) use of the domain name “in connection with a *bona fide* offering of goods or services”; (ii) demonstration that respondent has been “commonly known by the domain name”; or (iii) “legitimate noncommercial 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”.

Respondent did not reply to Complainant’s contentions. Respondent did not allege or otherwise provide any information that would support a finding that Respondent has rights or legitimate interests in the disputed domain name. Rather, as noted, Respondent has used the URL associated with the disputed domain name to resolve to a website that appears to mimic an official website of Complainant.

Accordingly, the Panel finds that Complainant has made a *prima facie* showing of Respondent’s lack of rights or legitimate interests in the disputed domain name, in accordance with paragraph 4(a)(ii) of the Policy, which Respondent has not rebutted.

C. Registered and Used in Bad Faith

There are several ways that a complainant can demonstrate that a domain name was registered and used in bad faith. For example, paragraph 4(b)(iv) of the Policy states that bad faith can be shown where “by using the domain name [respondent has] intentionally attempted to attract, for commercial gain, Internet users to [respondent’s] web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [respondent’s] website or location or of a product or service on [the] web site or location”. As noted in Section 4 of this Panel’s decision, Respondent has used the URL associated with the disputed domain name to resolve to a website that appears to mimic an official website of Complainant, including by offering products sold under the ERGOBABY mark, and by referencing information about Complainant in the “About” section, and displaying Complainant’s registered mark and logo. Respondent is thus trading on the goodwill of Complainant’s trademarks to attract Internet users, presumably for Respondent’s own commercial gain.

Therefore, the Panel finds that Respondent registered and used the disputed domain name in bad faith for purposes of paragraph (4)(a)(iii) of the Policy.¹

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 <ergobabylimited.com> be transferred to Complainant.

/Lorelei Ritchie/

Lorelei Ritchie

Sole Panelist

Date: September 8, 2023

¹ In light of the Panel’s finding of bad faith, it is unnecessary to determine whether Respondent has engaged in a pattern of misconduct under the Policy.