

ADMINISTRATIVE PANEL DECISION

Scentsational Shoppe, Inc. v. Jeffrey Potts, The Common Scents, Inc.
Case No. D2023-3525

1. The Parties

Complainant is Scentsational Shoppe, Inc., United States of America (“U.S.”), represented by The Vanel Law Firm, P.C., U.S.

Respondent is Jeffrey Potts, The Common Scents, Inc., U.S., represented by Hollander Law, P.C., U.S.

2. The Domain Name and Registrar

The disputed domain name <perfume-oils.com> (hereinafter “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 14, 2023. On August 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 22, 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 (Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to Complainant on August 24, 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 the same August 24, 2023.

The 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 August 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2023. The Response was filed with the Center on September 13, 2023.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on September 28, 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 owns United States Trademark Registration No. 5491554 (registered on June 8, 2018, filed on March 11, 2017 and claiming a 1998 first use in commerce) for PO PERFUME OILS for “Retail . . . and online store services featuring fragrances, soaps, incense, air fresheners, lotions.” The registration states:

“The color(s) blue is/are claimed as a feature of the mark.

The mark consists of the wording ‘PO’ over the wording ‘PERFUME OILS’ all in a stylized font and all in the color blue.

No claim is made to the exclusive right to use the following apart from the mark as shown: ‘PERFUMES’ AND ‘OILS’.”

Respondent registered the Domain Name January 17, 2016. On his website, Respondent offers to sell “Women’s Perfume Oils”, and similar products.

5. Parties’ Contentions

A. Complainant

Complainant contends that it owns trademark rights in the mark PO PERFUME OILS (the Mark”) as evidenced by the above registration.

Complainant then simply recites the text of Policy paragraphs 4(a), asserting without supporting argument or evidence that:

- “Respondent is directly infringing on Complainant’s trademark with the infringing domain name and website.”
- “The domain name has been registered and used in bad faith.”

B. Respondent

Respondent contends that Complainant failed to offer arguments or evidence to support any of its contentions.

Respondent also contends that the terms “perfume” and “oils” are generic and that Complainant’s trademark registration expressly disclaims any rights in these terms apart from the entire mark, which includes the letters “PO” and stylized elements (cursive script in blue). Respondent does not include in the Domain Name any elements other than the disclaimed terms “perfumes” and “oils”.

Respondent challenges Complainant’s allegation of bad faith as unsupported by any argument or evidence.

6. Discussion and Findings

A. Identical or Confusingly Similar

Although Complainant's trademark registration demonstrates that it has rights in the trademark PO PERFUME OILS, those rights are limited. Complainant's registration disclaims rights in "perfume" and "oils" apart from the mark as a whole. If "the similar elements of the domain name are made up exclusively of disclaimed terms, trademark rights under the Policy may not be found unless the complainant can show sufficient secondary meaning in the disclaimed terms". WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.3. Complainant did not offer any evidence or argument to support a claim of secondary meaning. In fact, Complainant offered no evidence describing or quantifying its use of "Perfume Oil".

Accordingly, Complainant has failed to satisfy Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Complainant asserts without explanation or argument that "Respondent is directly infringing on Complainant's trademark with the infringing domain name and website". Complainant offers no evidence of its own use its mark so there is no basis to evaluate the allegation of "infringement". Accordingly, Complainant does not establish a *prima facie* case and therefore does not shift the burden to Respondent to defend its use. Respondent's response nonetheless rebuts Complainant's allegations. Complainant fails to even discuss Respondent's website where, the Panel finds, Respondent uses the Domain Name "in connection with a *bona fide* offering of goods or services". Policy paragraph 4(c)(ii).

Accordingly, Complainant has failed to satisfy Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Given the rulings above, there is no need to consider Policy paragraph 4(a)(iii).

D. Reverse Domain Name Hijacking

Complainant is represented by counsel, who knew or should have known it could not succeed as to any of the required three elements of the Policy.

Complainant must have been aware that its trademark rights were severely limited, but made no offer of evidence of its use of the Mark and or any evidence regarding secondary meaning.

Complainant made no effort to explain why Respondent's website did not evidence a *bona fide* online business. Complainant similarly made no effort to support its allegations of bad faith.

Complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the Domain Name.

The Panel finds RDNH. [WIPO Overview 3.0](#), section 4.16.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: October 12, 2023