

ADMINISTRATIVE PANEL DECISION

Voyetra Turtle Beach, Inc. v. Mo Chi
Case No. D2024-0953

1. The Parties

The Complainant is Voyetra Turtle Beach, Inc., United States of America (“United States”), represented by Sheppard, Mullin, Richter & Hampton, United States.

The Respondent is Mo Chi, United States.

2. The Domain Name and Registrar

The disputed domain name <turtlebeachusa.com> is registered with OnlineNic, Inc. d/b/a China-Channel.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 4, 2024. On March 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 6, 2024, 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 March 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 2, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on April 8, 2024. 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 Complainant is a corporation established under the laws of the state of Delaware, United States and headquartered in White Plains, New York, United States. Since 1993, the Complainant has manufactured and sold computer and console gaming audio headsets, earbuds, controllers, accessories, and related software under TURTLE BEACH marks. The Complainant has operated a website at “www.turtlebeach.com” (the “Complainant’s website”) since 1996. The Complainant’s stock is traded on the NASDAQ stock exchange, and the Complainant reported revenues of over USD 258 million in 2023.

The Complaint cites numerous examples of public recognition of its products under the TURTLE BEACH brand, including notices as “Best PS5 Headset for Multiplayer” and “Best Flight Stick for Xbox Series X|S” by *IGN* (2022); *PC Pilot’s* “PC Pilot Classic Award” and “Platinum Award” (2022); “the best control system for Xbox Series X|S owners” by *PC Magazine* (2023); “Best Gaming Controller” by *Magnetic* (2023); *GamesRadar’s* “Editor’s Choice Award” (2023); *Windows Central’s* “The Best Award” (January 2024); *CG Magazine’s* “Editor’s Choice” designation (2023); and “Best Peripherals and Accessories Brand” at the UK Video Game Industry Awards for four years in a row.

The Complainant holds relevant trademark registrations for TURTLE BEACH as a word mark or as a figurative mark with the words “Turtle Beach” prominently featured in or beside an inverted triangle with an image of a palm tree. These include the following registrations:

Mark	Jurisdiction	Registration Number	Registration Date	Goods or Services
TURTLE BEACH (standard characters)	United States	4091021	January 24, 2012	Digital music players and recorders, computer controllers, earphones, headphones, etc.; IC 9
TURTLE BEACH (words and design)	United States	4912089	March 8, 2016	Earbuds, earphones, headphones, related parts, computer audio software, etc.; IC 9, 28
TURTLE BEACH (words and design)	United States	4947232	April 26, 2016	Sound bars, loudspeakers, audio controller interfaces for headsets, downloadable files, computer software for controlling music, computer peripherals, etc.; IC 9

The Registrar reports that the disputed domain name was registered on July 3, 2023, by the Respondent Mo Chi in the State of New York, United States, giving an Outlook.com contact email address. At the time of this Decision, the disputed domain name does not resolve to an active website, but the Complaint attaches screenshots of the website (the “Respondent’s website”) associated with the disputed domain name in February 2024. The Respondent’s website mimicked the Complainant’s website, displaying the Complainant’s trademarked logo, pages with product photos apparently copied from the Complainant’s website, and text largely copied from the Complainant’s website. The content of the “About” page was nearly identical to the “About” page of the Complainant’s website. The Respondent’s website included a shopping cart and a contact form, soliciting orders and personal details from site visitors.

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 disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its TURTLE BEACH marks, and that the Respondent has no relationship with the Complainant and no right to use these marks, which are internationally known and registered in many jurisdictions. The Complainant observes that the Respondent's website "lacks any source-identifying information other than Complainant's Turtle Beach Marks, thus, deceptively leading visitors to believe Complainant is the source of the Infringing Website". The Complainant contends that the Respondent registered and used the disputed domain name to "misleadingly divert consumers to the Infringing Domain Name for commercial gain by creating a likelihood of confusion with Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's products and services". The Complainant asserts that the "offering of counterfeit goods and services bearing the Turtle Beach Marks does not constitute a bona fide offering of goods or services that could establish any rights or legitimate interests in the Infringing Domain Name".

The Complainant argues that these same facts support a finding that the Respondent registered and used the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) and the respondent has no rights or legitimate interests in respect of the domain name;
- (iii) and the domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A. Identical or Confusingly Similar

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

The Complainant has shown rights in respect of the TURTLE BEACH word mark and figurative marks prominently featuring the words "Turtle Beach". See [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the word mark (and the identical verbal element of the figurative marks) is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, the geographic abbreviation USA) may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

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

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. The Respondent has not demonstrated that it is known by a corresponding name, and it has not rebutted the Complainant’s assertion that the Respondent’s website offered counterfeit goods. The Respondent has not claimed nominative fair use as a reseller of the Complainant’s trademarked products, and in any event the Respondent’s website did not meet the widely accepted *Oki Data* test for assessing such fair use, as it did not disclose the Respondent’s relationship with the trademark holder. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8. To the contrary, the website falsely suggested that it was operated by the Complainant.

Moreover, panels have held that the use of a domain name for illegal activity (here, claimed to include the sale of counterfeit goods) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Respondent was clearly aware of the Complainant’s well-established TURTLE BEACH mark, as the Respondent’s website reproduced both the word mark and one of the registered figurative marks, along with photos and text copied from the Complainant’s website.

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. These include paragraph 4(b)(iv), evidence that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark. That describes the present circumstances.

Moreover, panels have held that the use of a domain name for illegal activity (here, claimed to include the sale of counterfeit goods) must be considered bad faith for Policy purposes. The use of a website mimicking the Complainant’s website to solicit personal details from site visitors may also be considered a form of phishing, another example of bad faith use. See [WIPO Overview 3.0](#), section 3.4.

On this record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 disputed domain name <turtlebeachusa.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: April 17, 2024