

ADMINISTRATIVE PANEL DECISION

Etablissements Cleon v. Antonio Philbrick
Case No. D2024-1212

1. The Parties

The Complainant is Etablissements Cleon, France, represented by Fidal, France.

The Respondent is Antonio Philbrick, United States of America (“US”).

2. The Domain Name and Registrar

The disputed domain name <clemanshoes.com> is registered with CNOBIN Information Technology Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 20, 2024. On March 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 2024, 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 (unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 28, 2024, 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 March 29, 2024.

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 April 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 24, 2024.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on May 3, 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 the French company ETABLISSEMENTS CLEON, a simplified joint stock company with a capital of EUR 1,000,000, registered with the Angers Trade and Companies Register under number 070 201 785, whose registered office is located at Zone Industrielle 49740 La Romagne, France. The Complainant has been manufacturing and selling shoes for more than fifty years.

The Complainant is the owner of several trademarks for KLEMAN (“KLEMAN trademark”), including:

- French Trademark Registration KLEMAN No. 3040590, registered on July 6, 2000; and
- United Kingdom Trademark Registration KLEMAN No. 00003254409, registered on September 4, 2017.

The Complainant is also owner of the domain name <kleman-france.com> (“KLEMAN domain”), registered on September 22, 2015.

The disputed domain name was registered on August 13, 2023. At the time of the decision and when the amended Complaint was filed, the disputed domain name resolved to an active website displaying the KLEMAN trademark and containing highly discounted offers for shoes.

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 as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to the KLEMAN trademark. The disputed domain name imitates the term “Kleman” on which the Complainant holds prior rights. The terms “Cleman” and “Kleman” are visually and phonetically very close, only the first letter differs. The addition of the descriptive term “shoes” in the disputed domain name does not diminish the similarity between the Complainant's prior rights and the disputed domain name. Furthermore, the “.com” extension is inoperative to rule out similarity between the signs at issue, as it is dictated by a technical imperative and is not taken into account when comparing the signs.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no rights that could justify the use of the disputed domain name. There is no business relationship or licensing between the Complainant and the Respondent that could justify the Respondent's use of the disputed domain name. Moreover, the Complainant has never authorized the Respondent to register and use the disputed domain name. The Respondent does not operate the disputed domain name in connection with a bona fide offering of goods. Various elements on the website suggest that the disputed domain name does not offer a bona fide offer, namely (i) the photos of the shoes, the names of the products and the texts presenting the products on the Respondent's website are a slavish copy of the Complainant's website, (ii) the KLEMAN trademark is reproduced on numerous pages of the Respondent's website, and (iii) the absence of information about the Respondent on the website, no address, no telephone number nor company name are given. The only information is the element “clemanshoes”, but the Complainant does not know if this is the company's name. If it is, the company doesn't seem to exist. The Respondent is probably not known under the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. In fact, the litigious website is commercial because it offers discounted shoes for sale. This use of the disputed domain name is unfair because there is every reason to believe that the Respondent registered it with the intention of misleading the customers by creating confusion with the Complainant's products and trademarks.

On the third element of the Policy, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith. The Respondent has knowingly attempted to attract, for profit, consumers to a website by creating confusion with the KLEMAN trademark. The disputed domain name refers to a website presenting an offer of products directly competing with those offered by the Complainant, namely shoes. The photos of the shoes and the names of the products, on the Respondent's website, are identical to those presented on the website under the KLEMAN domain. The Respondent's website is a slavish copy of the Complainant's website. However, the Complainant never gave its consent to the Respondent to reproduce the aforementioned elements. Nor did the Complainant give the Respondent permission to market the infringing footwear it presented. In this context, the use of the disputed domain name cannot be considered to be in good faith, as the Respondent is willfully maintaining the likelihood of confusion that exists between the Complainant's prior rights and the disputed domain name. In addition, the products on sale on the Respondent's website are all offered at a substantial price reduction in order to attract the Complainant's customers. All these factors lead the Complainant to believe that the sale of these shoes is a fraud. It is clear from these facts that the Respondent has used the Complainant's notoriety in order to make profits. This improper and illegitimate use of the disputed domain name for the purpose of misleading the Complainant's customers constitutes an act of unfair competition. The registration and use of the disputed domain name clearly demonstrates unfair and wrongful conduct on the part of the Respondent contrary to good commercial practice and an infringement of the Complainant's prior rights.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

It has been a consensus view in previous UDRP decisions that a respondent's default (i.e., failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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

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 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here the term “shoes”, may bear on assessment of the second and third elements, the Panel finds the addition of such 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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off, since the disputed domain name resolved to an active website displaying the KLEMAN trademark containing highly discounted offers for shoes) 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 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.

In the present case, the Panel notes that:

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off, since the disputed domain name resolved to an active website displaying the KLEMAN trademark containing highly discounted offers for shoes) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the 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 <clmanshoes.com> be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: May 23, 2024