

ADMINISTRATIVE PANEL DECISION

Davie Clothing Pty Ltd v. jad akkawi

Case No. D2024-1450

1. The Parties

The Complainant is Davie Clothing Pty Ltd, Australia, represented by FB Rice, Australia.

The Respondent is jad akkawi, Lebanon.

2. The Domain Name and Registrar

The disputed domain name <theoosie.com> 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 April 5, 2024. On April 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 12, 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 amendment to the Complaint on April 17, 2024.

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 the Respondent of the Complaint, and the proceedings commenced on April 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 16, 2024.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on May 24, 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 an Australian company operating since 2018 in the apparel business and particularly known for a wearable hooded blanket sold under the trademark THE OODIE or OODIE. The Complainant owns many trademark registrations for THE OODIE such as:

- 1) Australian Trademark Registration No. 2003718, registered on April 17, 2019;
- 2) Australian Trademark Registration No. 2119906, registered on September 14, 2020.

The Complainant owns and operates the domain name <theoodie.com> which it uses for selling its products online.

The disputed domain name was registered on October 29, 2022, and resolves to a website that seems to sell wearable blankets similar to those sold by the Complainant.

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 identical or confusingly similar to a trademark or service mark in which the Complainant has rights. THE OODIE and THE OOZIE are visually and phonetically similar and differ by just one letter. They are both coined words with no dictionary meaning.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant did not authorize the Respondent to use its trademark. The Respondent does not own any trademark registrations for THE OOZIE. The Respondent is offering for sale products that compete with the Complainant's products or that may be counterfeit.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The disputed domain name contains the word THE OOZIE which is confusingly similar to the Complainant's trademark and that is in itself an act of bad faith. The Respondent is using the disputed domain name in order to attract Internet users for profit by creating the likelihood of confusion with the Complainant's trademark. The Respondent must have had knowledge of the Complainant's trademark as the latter has been operating since 2018 and developed an important international reputation, particularly since COVID-19. Through its website, the Respondent is selling products that infringe the Complainant's registered trademark copyright. In addition, the Respondent is using photographs from the Complainant's website.

B. Respondent

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

6. Discussion and Findings

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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name with a typo whereby the letter “d” is replaced with “z”. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 a claimed sale of competing goods by creating an impression of affiliation, unfairly taking advantage of the similarity with a Complainant’s mark, 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 the Respondent must have been aware of the Complainant’s trademark and product as the disputed domain name is a typo of the Complainant’s trademark, the Complainant’s trademark was registered three years before the creation of the disputed domain name and the Respondent is selling a product that competes with the blanket hoodie sold by the Complainant. 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 a claimed sale of competing goods by creating an impression of affiliation 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 <theoozie.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: June 4, 2024