

ADMINISTRATIVE PANEL DECISION

Dansko, LLC v. Mike Simon
Case No. D2024-1753

1. The Parties

The Complainant is Dansko, LLC, United States of America (“United States”), represented by Cozen O'Connor, United States.

The Respondent is Mike Simon, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <danskoemporium.shop> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 25, 2024. On April 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 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 Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 29, 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 April 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 May 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 27, 2024.

The Center appointed Rebecca Slater as the sole panelist in this matter on June 4, 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 Dansko, LLC, a Pennsylvania-based footwear company that was founded in 1990. It began by selling clogs, and now offers other footwear including boots, sandals, flats, and sneakers.

The Complainant has a portfolio of registrations for DANSKO, including United States Trade Mark Registration No. 2712957 for DANSKO word mark (registered May 6, 2003) (the "Trade Mark").

The Respondent is apparently an individual named Mike Simon located in the United Kingdom. The Respondent did not submit a formal response, and consequently little information is known about the Respondent.

The Respondent registered the disputed domain name on April 10, 2024.

The website at the dispute domain name features the Trade Mark and purportedly offers similar footwear to the Complainant for sale.

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 the Trade Mark. It consists of the entirety of Trade Mark followed by the descriptive term "emporium".
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not been authorized by the Complainant to use the Trade Mark. The use of the disputed domain name to host a website which offers unauthorized or counterfeit goods for sale is not a bona fide offering of goods or services.
- The disputed domain name was registered and is being used in bad faith by the Respondent. The Respondent was aware of the Complainant and the Trade Mark and registered the disputed domain name to attract Internet users to the website for commercial gain, by creating a likelihood of confusion with the Trade Mark as to the source, sponsorship, affiliation or endorsement of the website. The use of the website at the disputed domain name to sell unauthorized or counterfeit goods shows that the Respondent had full knowledge of the Complainant and the Trade Mark.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 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 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 Trade Mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "emporium", 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 Trade 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.

The Complainant has not authorized the Respondent to use the Trade Mark and there is no evidence that the Respondent has ever been known by the disputed domain name.

Panels have held that the use of a domain name for illegal activity (here, claimed as sale of unauthorized or 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 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.

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.

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

Under paragraph 4(b)(iv) of the Policy, there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation, or endorsement of the website.

Given the reputation of the Complainant, the Panel finds it highly unlikely that the disputed domain name was registered without knowledge of the Complainant and the Trade Mark. The Respondent's goal in registering and using the disputed domain name appears to be to attract Internet users for potential commercial gain and to take unfair advantage of the Complainant and its Trade Mark. The Panel's finding is reinforced by the Respondent's use of the website at the disputed domain name to sell unauthorized or alleged counterfeit products under the Trade Mark. Further, the Respondent does not provide any disclaimer on its lack of relationship with the Complainant, which creates the false impression of an affiliation with the Complainant. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (here, claimed as sale of unauthorized or counterfeit goods) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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 <danskoemporium.shop> be transferred to the Complainant.

/Rebecca Slater/

Rebecca Slater

Sole Panelist

Date: June 18, 2024