

ADMINISTRATIVE PANEL DECISION

Ängsviol Blomstern AB v. Nicole McIntosh and Rogelio Agosto, Total Quality
Case No. D2024-3686

1. The Parties

The Complainant is Ängsviol Blomstern AB, Sweden, represented by Abion AB, Sweden.

The Respondents are Nicole McIntosh, and Rogelio Agosto, Total Quality, both United States of America (“United States”).

2. The Domain Names and Registrar

The disputed domain names <polarnopret.shop> and <polarnopyretdiscount.shop> are registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 11, 2024. On September 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 13, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (not known) and contact information in the Complaint.

The Center sent an email communication to the Complainant on September 18, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all disputed domain names are under common control. The Complainant filed an amended Complaint on September 19, 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 Respondents of the Complaint, and the proceedings commenced on September 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 14, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on October 15, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on October 22, 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 Swedish clothing brand, especially known for children's clothing. The Complainant has been designing and marketing children's products since the 1970s, but the origins of the company run back to the beginning of the 20th century.

The Complainant owns worldwide trademark registrations for the mark POLARN O. PYRET, such as the following:

- the United States trademark registration number 3640355 for POLARN O. PYRET, registered on June 16, 2009, covering goods and services in International classes 25, 28, and 35; and
- the International trademark registration number 846108 for POLARN O. PYRET, registered on November 18, 2004, covering goods in International classes 3, 18, and 25.

The disputed domain name <polarnopret.shop> was registered on August 17, 2024, and the disputed domain name <polarnopyretdiscount.shop> was registered on August 19, 2024.

At the time of filing the Complaint, both disputed domain names resolved to online shops, with similar content, copying the look and feel of the Complainant's official website at "www.polarnopyret.com", using the Complainant's product pictures and registered logotypes.

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 names.

Notably, the Complainant contends that it is a well-known company and the holder of several trademarks with substantial reputation; the disputed domain names are confusingly similar to its mark, as they are made up of the POLARN O. PYRET mark, and the word "discount", which refers to the retail of the branded products on a discount price, in the disputed domain name <polarnopyretdiscount.shop>, and, respectively, an intentional misspelling of its trademark by the removal of the letter "y", in the disputed domain name <polarnopret.shop>; the Respondents have no rights or legitimate interests in the disputed domain names; the Respondents registered and are using the disputed domain names in bad faith to divert Internet users to third parties' commercial websites, by creating a false sense of endorsement of affiliation to the Complainant; and it cannot be excluded that the websites under the disputed domain names are selling fake products or are used for phishing purposes.

B. Respondents

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

6. Discussion and Findings

6.1 Preliminary Procedural Issue: Consolidation of Multiple Respondents

The amended Complaint was filed in relation to nominally different disputed domain name registrants. The Complainant alleges that the disputed domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the disputed domain names (i) were created in a similar manner, incorporating the Complainant's trademark or a misspelling of the Complainant's trademark and the generic Top Level Domain ("gTLD") ".shop"; (ii) have been registered with the same Registrar and within a two-day timeframe from each other; and (iii) are used in the same manner, for online shops, with almost identical content, that copy the look and feel of the Complainant's website. Further, the DNS providers and the Respondents' country for both disputed domain names are the same.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

6.2 Substantive Issue: Three Elements

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain names; and
- (iii) the disputed domain names have been registered and are 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 names. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds 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 each of the disputed domain names. Accordingly, each of the disputed domain names is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term, here “discount”, in the disputed domain name <polarnopyretdiscount.shop>, 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. Further, the misspelling of the Complainant’s trademark, i.e., the removal of the letter “y” in the disputed domain name <polarnopret.shop>, also does not prevent a finding of confusing similarity under the first element. [WIPO Overview 3.0](#), sections 1.8 and 1.9.

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 record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

According to the evidence provided in the Complaint, the Respondent has used the disputed domain names in connection with websites promoting and purporting to offer for sale, goods branded with the Complainant’s trademark. Panels have held that the resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repair services related to the complainant’s goods and services may be making a bona fide offering of goods and services and thus have a legitimate interest in such a domain name if cumulative conditions are met. Such conditions, include, inter alia, that the site must accurately and prominently disclose the registrant’s relationship with the trademark holder. The websites under the disputed domain names do not prominently provide accurate information about the relationship between the Respondent and the Complainant. [WIPO Overview 3.0](#), section 2.8.1.

Moreover, the Panel finds that the composition of the disputed domain name <polarnopyretdiscount.shop> reproduces the Complainant’s trademark, with a term related to the Complainant’s business, together with the content, creates a risk of confusion between this disputed domain name and the Complainant. Panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1. In addition, the disputed domain name <polarnopret.shop> incorporates a misspelling of the Complainant’s trademark, and there is a risk that Internet users will not notice the subtle misspelling, and believe that this disputed domain name is also somehow connected to the Complainant.

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 finds that the disputed domain names were registered in bad faith, with knowledge of the Complainant and its trademark particularly because they are very similar to the Complainant's distinctive mark registered years ago, and its domain name. Furthermore, the use of the disputed domain names enforces such finding.

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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain names incorporate the Complainant's trademark, either with an additional term "discount" related to the Complainant's industry or a misspelling of the Complainant's mark, and the websites operated under the disputed domain names copy the look and feel of the Complainant's official website with no disclaimer, indeed in this Panel's view, the Respondent has intended to attract Internet users to access the websites corresponding to the disputed domain names who may be misled into believing that such websites are held, controlled by, or somehow affiliated with or related to the Complainant, for the Respondent's commercial gain.

Further evidence of bad faith are the following facts: the provision of false or inaccurate contact information in the WhoIs, as the Written Notice sent by courier could not be delivered to the Respondent; the nature of the disputed domain names and the failure of the Respondent to submit a response. [WIPO Overview 3.0](#), section 3.2.1.

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

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 names, <polarnopret.shop> and <polarnopyretdiscount.shop>, be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: October 29, 2024