

ADMINISTRATIVE PANEL DECISION

WeeDo Funwear GmbH v. maurice frisby
Case No. D2024-4459

1. The Parties

The Complainant is WeeDo Funwear GmbH, Germany, represented by HERTIN, Germany.

The Respondent is maurice frisby, United States of America.

2. The Domain Name and Registrar

The disputed domain name <weedofunwear.shop> is registered with Sav.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 30, 2024. On October 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 30, 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 (Redacted from ICANN for privacy reasons) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 31, 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 October 31, 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 November 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 28, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on December 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.

On December 9, 2024, the Panel issued a Procedural Order requesting the Complainant to resubmit the amended Complaint listing the correct Registrar and underlying registrant information. In response to the Procedural Order, the Complainant resubmitted the amended Complaint on December 11, 2024.

4. Factual Background

The Complainant was founded in 2018 and is headquartered in Hamburg, Germany (Annex 5 to the Complaint). It produces and distributes children ski suits with various animal designs and owns the following trademark registrations which contain the mark WEEDO as a distinctive component:

- German trademark registration (figurative), Registration No. 302020100939, registered on June 29, 2020, and
- German trademark registration (figurative), Registration No. 302019241760, registered January 21, 2020 (Annex 2 of the Complaint).
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The Complainant's registered company name is "WeeDo Funwear" (Annex 5 to the Complaint) and it owns the domain name <weedofunwear.com>, registered on February 11, 2019, which resolves to the business website of the Complainant, where it is offering children ski suits with various animal designs for sale (Annex 7 and 8 to the Complaint).

The disputed domain name was registered on June 7, 2024 (Annex 4 to the Complaint). At the time of filing the Complaint the disputed domain name resolved to a website displaying similar products for sale in a similar design as those to the Complainant's website as well as featuring the Complainant's figurative registered trademark (Annex 8 to the Complaint).

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 WEEDO trademark is distinctive and well known in the field of children ski suits with various animal designs. The Complainant notes that the disputed domain name contains the WEEDO trademark in its entirety, simply adding the descriptive term "funwear", which is part of the Complainant's company name.

The Complainant submits that it is therefore inconceivable that the Respondent would not have been aware of the Complainant's trademark when registering the disputed domain name, or that there would be any legitimate use for the disputed domain name. Further, the Complainant contends that it has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the WEEDO trademark in any manner.

The Complainant notes that the disputed domain name is actively used for selling similar products than those to the Complainant's branded products through a web shop, available on a website branded with the Complainant's distinctive and well-known figurative trademark, and addressed by the disputed domain name.

Hence, the Complainant contends, that based on the totality of these factors, it is clear that the Respondent is acting in bad faith with the intent to create a likelihood of confusion with the Complainant's mark and legitimate e-commerce website.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is 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 with respect to 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark WEEDO through trademark registrations.

In the present case the disputed domain name is confusingly similar to the WEEDO trademark as the trademark is recognizable within the disputed domain name.

It has long been established under UDRP decisions that the mere addition of terms, does not prevent a finding of confusing similarity under the first element of the Policy if the relevant mark remains recognizable within the disputed domain name ([WIPO Overview 3.0](#), section 1.8). This is the case at present.

Finally, it has also long been held that generic Top-Level Domains ("gTLD"), here: ".shop", are generally disregarded when evaluating the confusing similarity between a disputed domain name and a trademark. [WIPO Overview 3.0](#), section 1.11.

Based on the available record, 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.

While 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 often impossible 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. 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 name, since it has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the WEEDO mark in any manner.

The Respondent did not reply and hence has not rebutted the Complainant's contentions.

The Complainant focuses on the fact that its trademark is distinctive and well known in the field of children ski suits with various animal designs; moreover, the Respondent used the Complainant's figurative trademark on its website addressed by the disputed domain name, without any authorization from the Complainant.

Further, the Respondent did not come forward with any evidence showing that it is commonly known under the disputed domain name or that it has rights or legitimate interests in the disputed domain name: Given the composition of the disputed domain name, adding the term "funwear" to the Complainant's trademark WEEDO, coupled with the use of the gTLD ".shop" to resolve to a website in which the Respondent tries to impersonate the Complainant and supposedly sell similar goods as those of the Complainant affirms the Respondent's intention of taking unfair advantage of the inherent confusion between the disputed domain name and the Complainant as to the origin or affiliation of the website at the disputed domain name.

The disputed domain name is confusingly similar to the Complainant's company name and domain name <weedofunwear.com>.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant established rights in the mark WEEDO, long before the registration of the disputed domain name. The disputed domain name resolved to a website where similar products than those of the Complainant were offered for sale by using the Complainant's figurative trademark.

It is therefore inconceivable for this Panel that the Respondent has registered and used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's distinctive trademark entirely, together with the descriptive term "funwear" which is part of the Complainant's registered company name.

All of these facts indicate that the Respondent must have been aware of the Complainant's business and trademark when registering the disputed domain name.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The Complainant put forward evidence that the disputed domain name resolved to a website where the Complainant's registered figurative trademark was displayed and products similar to those from the Complainant's web shop under <weedofunwear.com> were offered for sale.

In doing so, the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's mark WEEDO and its figurative trademark registration as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith registration and use of the disputed domain name. The Respondent did not rebut these contentions.

Based on the available record, 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 <weedofunwear.shop> be transferred to the Complainant.

/Peter Burgstaller/
Peter Burgstaller
Sole Panelist
Date: December 20, 2024