

ADMINISTRATIVE PANEL DECISION

Dansko, LLC v. zilong zhao

Case No. D2024-5067

1. The Parties

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

Respondent is zilong zhao, United States.

2. The Domain Name and Registrar

The disputed domain name <danskonlineapotek.life> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 9, 2024. On December 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 10, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registrant Unknown) and contact information in the Complaint. The Center sent an email to Complainant on December 12, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 12, 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 Respondent of the Complaint, and the proceedings commenced on December 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 6, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 17, 2025.

The Center appointed Robert A. Badgley as the sole panelist in this matter on January 22, 2025. 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

According to Complainant:

"Since 1990, Complainant has provided comfort footwear to customers around the world. [...] Beginning with clog sales, Complainant now offers other footwear including boots, sandals, flats, and sneakers, all designed for long-wear and comfort. [...] As testament to their comfort, Complainant's footwear has been a top choice of medical professionals for over two decades."

Complainant owns several registered trademarks, including United States Patent and Trademark Office ("USPTO") Reg. No. 2,712,957 for the word mark DANSKO, registered on May 6, 2003, in connection with "footwear, namely, casual outdoor shoes and work shoes for use in the health care, food service, equestrian, and general service industries," with a January 1991 date of first use in commerce; USPTO Reg. No. 2,712,953 for the stylized mark DANSKO, registered on May 6, 2003, in connection with "footwear, namely, casual outdoor shoes and work shoes for use in the health care, food service, equestrian, and general service industries," with a January 1991 date of first use in commerce; and USPTO Reg. No. 5,638,606 for the word mark DANSKO NATURAL ARCH, registered on December 25, 2018, in connection with "footwear; insoles for footwear."

Complainant owns the domain name <dansko.com> and uses that domain name to host a commercial website promoting and offering its products.

The Domain Name was registered on November 4, 2024. The Domain Name resolves to a website featuring nudity. There appear to be links to nude AI-generated pictures and leaked OnlyFans content.

Captures on the Internet Archive Wayback Machine show that in 2018 it was used for a site listing the names of prescription drugs and links to information about each.

There does not appear to be anything on Respondent's website relating to footwear or using the mark DANSKO by itself. Nor does Complainant's stylized mark DANSKO appear anywhere on the site.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the 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 Complainant's trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7

The Panel concludes that Complainant has rights in the trademark DANSKO through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The Domain Name entirely incorporates the mark and adds additional letters. The Panel concludes that the mark remains recognizable within the Domain Name despite these additional letters.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel need not address this element, given its conclusion below on the "Bad Faith" element.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes, on this record and on a balance of probabilities, that Complainant has failed to carry its burden of proving bad faith registration and use of the Domain Name. There is not enough evidence to support the conclusion that Respondent more likely than not had Complainant's DANSKO mark in mind when registering the Domain Name.

Although the Domain Name entirely incorporates the DANSKO mark, the Panel does not agree with Complainant's characterization that the remaining letters in the Second-Level Domain are just "additional non-distinctive, meaningless letters." Rather, the Domain Name appears to include three words, Dansk (Danish), Online, and Apotek (Pharmacy). Why Respondent chose the equivalent of "Danish Online Pharmacy" for the Domain Name is not apparent from the record – it could be based on the past use but it does not seem to be the type of registration to trigger a claim to likelihood of confusion with the Complainant's mark. In any event, as noted above, there is no content at Respondent's website, however unsavory it may be to Complainant, that betrays any awareness by Respondent of Complainant's DANSKO mark. The mark DANSKO on its own is not reflected at the site. Complainant's logo is not reflected there. No footwear is featured or promoted there.

In sum, the Panel sees no basis on which to conclude that Respondent was aware of Complainant's DANSKO mark when registering the Domain Name. The fact that the Panel cannot divine Respondent's motives on this record does not overcome the fact that Complainant has failed to prove that Respondent more likely than not targeted Complainant's mark.

Finally, Complainant argues that its registered trademarks impart constructive notice on Respondent. While the concept of constructive notice of a registered trademark is certainly viable under United States trademark infringement law, this proceeding is under the UDRP. The concept of constructive notice, while sometimes applied to UDRP proceedings, does not supplant the UDRP requirement of bad faith registration, a requirement which entails actual knowledge, not legally imputed knowledge – particularly in this case, where neither the composition of nor the content at the Domain Name indicate an awareness of the Complainant and its trademarks.

Complainant has not established Policy paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, the Complaint is denied.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: February 3, 2025