

## **ADMINISTRATIVE PANEL DECISION**

A&S Holdings (AUS) Pty Ltd v. Sam Nelson, Sam Nelson  
Case No. D2025-0720

### **1. The Parties**

The Complainant is A&S Holdings (AUS) Pty Ltd, Australia, represented by Corrs Chambers Westgarth, Australia.

The Respondent is sam nelson, sam nelson, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <tigermist.shop> is 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 February 21, 2025. On February 21, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 22, 2025, 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 for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 24, 2025, 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 February 28, 2025.

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 March 4, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 24, 2025. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent's default on March 26, 2025.

The Center appointed Gustavo Patricio Giay as the sole panelist in this matter on April 7, 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**

The Complainant was founded in 2007 and operates a women's fashion clothing business under the name Tiger Mist. The business is run by the Complainant and its related entities (the A&S Group), which have used the Tiger Mist name continuously since inception.

The Complainant conducts its business primarily through its official website located at <tigermist.com>, registered on April 4, 2007, which receives a significant number of visitors from around the world.

In addition, the Complainant has established a strong online presence through multiple social media platforms. Its Facebook page has over 210 thousand followers; its Instagram account has more than 1.6 million followers; and its TikTok profile boasts over 212.5 thousand followers.

The Complainant is the owner of trademark rights in TIGER MIST and operates a global business strongly associated with that name, as evidenced by its commercial success, digital footprint, and long-standing domain name registration.

The Complainant is the owner of trademark TIGER MIST in many jurisdictions, including: Australian Trademark Office, Reg. No. 1732801, in classes 25, 35 and 42, registered since November 5, 2015; Reg. No. 1596115, in class 35, registered since December 11, 2013; Reg. No. 1564099, in class 25, registered since June 24, 2013; and International registration Reg. No. 1373639, in classes 25, 35 and 42 registered since September 28, 2017.

Finally, the disputed domain name was registered on October 26, 2024, and it resolves to a website that replicates the Complainant's TIGER MIST trademark and offers products that compete directly with those of the Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that the disputed domain name is confusingly similar to its trademark TIGER MIST, and to its associated domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, nor is he related in any way to the Complainant. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark TIGER MIST or apply for registration of the disputed domain name.

More specifically, the Complainant alleged that the Respondent has not used and/or has no demonstrable intention to use the disputed domain name except to create a likelihood of confusion with the Complainant's trademark. In fact, the Complainant claims that the Respondent has selected the disputed domain name only to intentionally lead Internet users to believe they are accessing the Complainant's website.

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

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

Moreover, the ".shop" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element of the confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

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.

The Complainant has claimed not to have authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the TIGER MIST trademark nor is there any other evidence in the file suggesting that the Respondent has or could have rights or legitimate interests in the disputed domain name.

Likewise, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name. In this regard, the disputed domain name points to a commercial website that displays the Complainant's TIGER MIST trademark and appears to offer goods in direct competition with those offered by the Complainant. These actions clearly aim to exploit the Complainant's reputation by misleading Internet users into believing that the website is an official platform of the Complainant. Hence, as established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry."

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 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 such connection, the Complainant has submitted evidence to support that the trademark TIGER MIST was registered and used many years before the Respondent registered the disputed domain name. When registering the disputed domain name, the Respondent has targeted the Complainant's trademark TIGER MIST to create confusion among the Internet users and benefit from the Complainant's reputation.

Therefore, the Panel is satisfied that the Respondent must have been aware of the Complainant and the Complainant's trademark TIGER MIST when it registered the disputed domain name. Consequently, and in accordance with Section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant's TIGER MIST trademark in the disputed domain name creates a presumption that the disputed domain name was registered on a bad faith basis.

Likewise, the disputed domain name resolves to a commercial website that offers goods and services in direct competition with the Complainant. Clearly, the Respondent knew the existence of the Complainant when registering the disputed domain name.

The Panel finds therefore that the Respondent's use of the disputed domain name was intended to attract and mislead Internet users when searching for the Complainant's website and to redirect them to a website from which the Respondent most probably derives commercial revenue by creating a likelihood of confusion with the Complainant's trademark.

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 <tigermist.shop> be transferred to the Complainant.

*/Gustavo Patricio Giay/*

**Gustavo Patricio Giay**

Sole Panelist

Date: April 21, 2025