

ADMINISTRATIVE PANEL DECISION

Aqualung Corporate v. Ieroux Bruno
Case No. D2023-0222

1. The Parties

The Complainant is Aqualung Corporate, France, internally represented.

The Respondent is Ieroux Bruno, France.

2. The Domain Name and Registrar

The disputed domain name <aqualung-corporate.com> (the “Domain Name”) is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 18, 2023. On January 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 19, 2023, 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 (On behalf of aqualung-corporate.com OWNER / c/o whoisproxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 19, 2023, 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 January 24, 2023.

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 January 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 15, 2023.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on February 21, 2023. 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

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a French headquartered company in the business of designing, manufacturing and selling diving equipment and watersports gear.

The Complainant's wholly-owned subsidiary is the owner of many trade marks for AQUA-LUNG, AQUA LUNG and AQUALUNG (hereinafter referred to as the "AQUALUNG" trade mark), including the following:

- International Trade Mark No. 326683, AQUA-LUNG, registered on November 18, 1966.

The Complainant is also the owner of several domain names reflecting its trade mark, including the domain name <aqualung.com> since 1995.

The Complainant's registered company name is Aqualung Corporate.

The Domain Name was registered on November 19, 2022. The Domain Name directs to an active website with content relating to asset management and using the Complainant's corporate details including its corporate name, address, registration number as well as the name of one of the Complainant's directors.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the AQUALUNG trade mark in which the Complainant has rights. The Complainant highlights that the Domain Name reproduces the full AQUALUNG trade mark with the mere addition of the generic term "corporate" and the generic Top-Level Domain ("gTLD") ".com" which are insufficient to distinguish the Domain Name from the Complainant's trade mark.

The Complainant contends that the Respondent has no rights or legitimate interests in the Domain Name. The Complainant asserts that to the best of its knowledge, the Respondent has never been operating any business activity under the name "Aqualung" or "Aqualung Corporate" and has no prior registered rights to the name "Aqualung" or "Aqualung Corporate". The Complainant adds that the Respondent has not been authorized by the Complainant to use the name "Aqualung" or "Aqualung Corporate" and that there is no business relationship, and no link of any nature, between the Complainant and the Respondent. Finally, the Complainant submits that the Domain Name is not used in connection with a *bona fide* offering of goods or services and does not constitute a legitimate noncommercial or fair use of the Domain Name given that the Respondent is simply impersonating the Complainant.

The Complainant submits that the Domain Name was registered and is being used in bad faith. The Complainant points to the renown of the AQUALUNG trade mark and products internationally to conclude that the registration of the Domain Name reproducing the entire AQUALUNG trade mark cannot be a coincidence. In terms of use in bad faith the Complainant points to the fact that although the website content does not relate to the Complainant's field of activity, it attempts to impersonate the Complainant by misleadingly using the Complainant's corporate details including its corporate name, address, registration number as well as the name of one of the Complainant's directors.

B. Respondent

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

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the 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.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to base its decision on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in AQUALUNG.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade mark AQUALUNG in which the Complainant has rights.

At the second level, the Domain Name consists of the term "aqualung-corporate". The Panel finds that the mere addition of the generic term "corporate" after the AQUALUNG trade mark of the Complainant does not prevent a finding of confusing similarity between the Complainant's trade mark and the Domain Name.

Then there is the addition of the gTLD ".com". As is widely accepted, the addition of a gTLD such as ".com" is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent's] 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) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

(iii) [the respondent] is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.”

Numerous previous panels have found under the UDRP that once a complainant makes a *prima facie* showing that the respondent does not have rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the showing by demonstrating its rights or legitimate interests in the domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the Domain Name.

The Complainant has stated that to the best of the Complainant's knowledge, the Respondent has never been operating any business activity under the name "Aqualung" or "Aqualung Corporate" and has no prior registered rights to the name "Aqualung" or "Aqualung Corporate". The Complainant has declared that it has never licensed the Respondent to use the AQUALUNG trade mark. There is no evidence that the Respondent is commonly known by the Domain Name.

The Domain Name is used to direct to a website which, whilst not in direct competition with the Complainant, constitutes an attempt to impersonate the Complainant's corporate identity as it reproduces the Complainant's corporate details including its corporate name, address, registration number as well as the name of one of the Complainant's directors. This use of the Domain Name cannot be seen as a legitimate noncommercial or fair use of the Domain Name nor can it be seen as a *bona fide* offering of goods or services. See section 2.13.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In addition, the nature of the Domain Name, comprising the Complainant's trade mark in its entirety along with the term "corporate", matching the Complainant's corporate name, is likely to trigger a risk of implied affiliation especially in light of the overall circumstances of the case including the use of the Complainant's corporate details on the website associated with the Domain Name. See section 2.5.1 of the [WIPO Overview 3.0](#).

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that [the respondent has] registered or acquired [a disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or
- (ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

- (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other on-line 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.

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The Domain Name is confusingly similar to the trade mark AQUALUNG of the Complainant and this cannot be a coincidence.

The trade mark AQUALUNG of the Complainant is not a descriptive or common term and the Complainant has substantiated that its AQUALUNG trade mark has acquired substantial goodwill and renown. The Panel thus finds that it is highly likely that the Respondent, who is based in the country where the Complainant is headquartered, deliberately registered the Domain Name to specifically target the Complainant. The Panel also infers from the use of the Domain Name that it was registered in bad faith.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint, the documentary evidence provided by the Complainant and the brief verification carried out by the Panel of the website associated with the Domain Name, the Panel is satisfied that the Domain Name is used in bad faith.

The Domain Name appears to be used to direct to a website which, whilst not in direct competition with the Complainant, constitutes an attempt to impersonate the Complainant's corporate identity as it reproduces the Complainant's corporate details including its corporate name, address, registration number as well as the name of one of the Complainant's directors. This type of use is conclusive evidence of bad faith on the part of the Respondent. The Panel thus considers that by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product on the Respondent's website.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is being used in bad faith.

Thus, the Panel finds that the Domain Name was registered and is being used in bad faith.

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 Domain Name <aqualung-corporate.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: March 7, 2023