

ADMINISTRATIVE PANEL DECISION

Locatelli SPA v. Yuying Liu
Case No. D2023-2659

1. The Parties

The Complainant is Locatelli SPA, Italy, represented by Dr. Modiano & Associati S.p.A., Italy.

The Respondent is Yuying Liu, China.

2. The Domain Name and Registrar

The disputed domain name <airohit.shop> (the “Domain Name”) is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 23, 2023. On June 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 23, 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 (Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 3, 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 July 6, 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 July 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2023.

The Center appointed Dawn Osborne as the sole panelist in this matter on August 16, 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

The Complainant owns the trade mark AIROH in both word and/or logo form, which is registered, *inter alia*, in the United States of America, European Union, and China for bicycle safety helmets including European Union registration no 010542991, registered on June 2, 2012..

The Domain Name registered on June 30, 2022 is attached to a site that purports to sell the Complainant's products at discounted prices using the Complainant's trade mark in its logo form as a masthead, and language on the site suggesting that the site originates with the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant owns the trade mark AIROH word and/or logo form, registered, *inter alia*, in the United States of America, European Union, and China for bicycle safety helmets with first use recorded as 2013, in the United States of America.

The Domain Name registered in 2022, is confusingly similar to the Complainant's trade mark containing it in its entirety and merely adding the abbreviation "it" meaning Italy and the generic Top-Level Domain ("gTLD") ".shop" which do not prevent said confusing similarity between the Domain Name and the Complainant's mark.

The Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent is not commonly known by the Domain Name and is not authorised by the Complainant. The web site connected with the Domain Name purports to sell the Complainant's products using the Complainant's trade mark in its logo form as a masthead and language suggesting that the site originates with the Complainant. Since Internet users will be duped into believing the site attached to the Domain Name is official this is not legitimate. It is registration and use in bad faith confusing and diverting Internet users for commercial gain. The use of the Complainant's logo and the reference to its products on the site attached to the Domain Name shows that the Respondent had actual knowledge of the Complainant, its rights, business and services.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Name consists of the Complainant's AIROH mark (which is registered in word and/or logo form in the United States of America, European Union, and China), the term "it" which can mean Italy where the Complainant is based, and the gTLD ".shop".

Previous UDRP panels have found confusing similarity when a respondent merely adds a dictionary term to a complainant's mark. The Panel agrees that the addition of the term "it", commonly used to mean Italy, does not prevent a finding of confusing similarity between the Domain Name and the Complainant's trade mark.

The gTLD “.shop” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Accordingly, the Panel holds that the Domain Name is confusingly similar to the Complainant’s mark.

As such the Panel holds that paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Complainant has not authorised the use of its mark. There is no evidence or reason other than the site complained of to suggest the Respondent is, in fact, commonly known by the Domain Name.

The web site in Italian attached to the Domain Name uses the Complainant’s logo as a masthead and language on the site itself to suggest that it is an official site of the Complainant when it is not. The Panel finds this use is deceptive and confusing. As such it cannot amount to the *bona fide* offering of goods and services.

The Respondent has not answered the Complaint or rebutted the *prima facie* case evidenced by the Complainant as set out herein.

As such the Panelist finds that the Respondent does not have rights or a legitimate interest in the Domain Name and that the Complainant has satisfied the second limb of the Policy.

C. Registered and Used in Bad Faith

In the opinion of the Panel the use made of the Domain Name in relation to the Respondent’s site is confusing and disruptive in that visitors to the site might reasonably believe it is connected to or approved by the Complainant as it offers at discounted prices products under the Complainant’s mark and logo used as a masthead and uses language giving the impression that the site attached to the Domain Name is official. The use of the Complainant’s logo and the reference to the Complainant’s products on the site shows that the Respondent has actual knowledge of the Complainant and its business, products and rights.

Accordingly, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its web site by creating a likelihood of confusion with the Complainant’s trade mark as to the source, sponsorship, affiliation or endorsement of the web site or products on it likely to disrupt the business of the Complainant.

As such, the Panelist believes that the Complainant has made out its case that the Domain Name was registered and used in bad faith and has satisfied the third limb of the Policy under para 4(b)(iii) and (iv).

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, <airohit.shop>, be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: August 18, 2023