

ADMINISTRATIVE PANEL DECISION

Kentrell DeSean Gaulden and Never Broke Again, LLC v. Minh Tran
Case No. D2023-5320

1. The Parties

The Complainants are Kentrell DeSean Gaulden and Never Broke Again, LLC, both United States of America ("United States"), represented by Anderson Law, United States.

The Respondent is Minh Tran, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <neverbrokeagain.com> is registered with Porkbun LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 21, 2023. On December 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 2023, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainants on January 4, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on January 8, 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 January 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 5, 2024.

The Center appointed Knud Wallberg as the sole panelist in this matter on February 12, 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.

4. Factual Background

The Complainant, Never Broke Again, LLC, is the loan-out company of the Complainant Kentrell DeSean Gauden, a musical recording artist, professionally known as YoungBoy Never Broke Again. The Complainants have continuously used NEVER BROKE AGAIN as a source identifier and trademark in commerce in connection with services, including musical recordings, and the designation NEVER BROKE AGAIN is well recognized as a record label imprint used by the Complainants since at least as early as January 2015. The Complainants market a line of clothing under the brand name NEVER BROKE AGAIN through a licensed manufacturer and distributor via its official merchandise website at “www.neverbrokeagain.com”.

The Complainant, Never Broke Again, LLC, is the owner of the trademark NEVER BROKE AGAIN, registered with the United States Patent and Trademark Office on January 21, 2020 for goods in class 9 under the number 5,964,482.

The disputed domain name was registered on January 30, 2023. When the Complaint was filed, the disputed domain name was used actively for a website, throughout which clothing products were displayed and offered for sale which infringed upon the Complainants’ trademarks and the name, image, likeness, and publicity rights of Kentrell DeSean Gauden. The disputed domain name is no longer used for an active website at the time of this Decision.

5. Parties’ Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that the disputed domain name is confusingly similar to the Complainants’ NEVER BROKE AGAIN mark since it has been formed by appropriating the Complainants’ mark and adding only the letter “s” and the generic Top-Level Domain (“gTLD”) “.com”.

The Complainants further contend that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known nor associated with any part of the disputed domain name, and the Respondent has not used the disputed domain name or a name corresponding to the disputed domain name in connection with any bona fide offering of goods or services.

The Complainants finally contend that the disputed domain name was registered primarily for the purpose of disrupting the Complainants’ legitimate business. The Respondent has used the pluralized version of the Complainants’ domain name to intentionally attempt to attract for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the Complainants’ mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website and the infringing goods offered and sold on Respondent’s website. Despite express notice of the Complainants’ rights, the Respondent has continued to use the disputed domain name in bad faith.

B. Respondent

The Respondent did not reply to the Complainants’ contentions.

6. Discussion and Findings

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 Complainants' 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 Complainants have 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 confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Having reviewed the available record, the Panel finds the Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainants' 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.

Further, according to the Complainants' evidence, the website at the disputed domain name has featured the Complainants' trademarks, and the image of the Complainant Kentrell DeSean Gaulden, and has purportedly offered for sale products under the Complainants' trademarks without any disclaimer regarding the relationship between the Complainants and the Respondent. Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 the present case, the Panel notes that the records of this case reflects that the disputed domain name, incorporating the Complainants' prior registered trademarks, has been used actively for a website, throughout which clothing products have been displayed and offered for sale under the Complainants' trademarks. Therefore, the Panel finds that the Respondent has initially used the disputed domain name in an attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainants' 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. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The fact that the disputed domain name no longer resolves to an active website nor appears to be used actively in other ways anymore, does not prevent a finding of bad faith in the circumstances of this proceeding. [WIPO Overview 3.0](#), section 3.3.

The Panel finds that the Complainants have 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 <neverbrokeagains.com> be transferred to the Complainants.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: February 26, 2024