

ADMINISTRATIVE PANEL DECISION

Skullcandy, Inc. v. Kayleigh Smith, Joel Dunn, Abigail Gough, John Spencer, Poppy Moss, Hannah Davidson, Laura Young, Luca Cross, Luke Cook, Evan Norman, Tilly Goodwin, Jessica Brennan
Case No. D2024-3358

1. The Parties

The Complainant is Skullcandy, Inc., United States of America, represented by Marq Vision Inc., United States of America.

The Respondent is Kayleigh Smith, Joel Dunn, Abigail Gough, John Spencer, Poppy Moss, Hannah Davidson, Laura Young, Luca Cross, Luke Cook, Evan Norman, Tilly Goodwin, Jessica Brennan, Belgium.

2. The Domain Names and Registrar

The disputed domain names <skullcandyargentina.com>, <skullcandycanada.com>, <skullcandychile.com>, <skullcandycolombia.com>, <skullcandygreece.com>, <skullcandyisrael.com>, <skullcandyjapan.com>, <skullcandykuwait.com>, <skullcandymexico.com>, <skullcandyperu.com>, <skullcandyportugal.com>, <skullcandyuk.com> are registered with Paknic (Private) Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 14, 2024. On August 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 17, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 19, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on August 23, 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 August 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 18, 2024.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on October 1, 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 is an American corporation which produces and distributes a wide range of audio products since 2003.

The Complainant is the owner of a portfolio of trademarks rights. By way of example:

- European Union Trade Mark number 003209087 for SKULLCANDY, registered on January 13, 2005;
- International trademark registration number 1410315 for SKULLCANDY FULL-FEATURED WIRELESS, registered on May 16, 2018.

All the disputed domain name were registered on April 23, 2023, and, at the time of filing of the Complaint, all resolved to a website where the Complainant's SKULLCANDY trademark and logo were reproduced. Currently the disputed domain names are inactive.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that all the disputed domain names resolve to websites sharing the same format and identical layouts, all the disputed domain names were registered the same day using the same Registrar, in all of them contact details share similarities such as part of the address or the same country code for Belgium, and all email contact addresses are using the same ending, i.e. "@awzmail.com". Besides, all the disputed domain names share the same composition reproducing the Complainant's trademark plus a geographical term (Portugal, United Kingdom, etc.) and all websites predominantly promote payment via methods such as Visa, Mastercard, and PayPal.

The Complainant sent on August 4, 2024, to the Respondent via the Registrar a report regarding the disputed domain names and allegedly infringing activities. No answer was received.

Additionally, the Complainant alleges that the Respondent tried to impersonate the Complainant and deceived users.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a “default” the Panel is still required “to proceed with a decision on the complaint”, whilst under paragraph 14(b) it “shall draw such inferences there from as it considers appropriate”. This dispute resolution procedure is accepted by the disputed domain name registrant as a condition of registration.

A. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are under common control and thus requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

As noted, the disputed domain name registrants did not comment on the Complainant’s request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant’s request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.2.

As regards common control, the Panel notes that the evidence supports a common control over the set of disputed domain names. In the Panel’s view the Complainant’s allegations as set out above and with evidence provided overwhelmingly support consolidation.

Regarding fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “the Respondent”) in a single proceeding.

B. 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 Panel finds the mark is recognizable within all the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, different geographical terms, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

C. 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 Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

Indeed, upon examination of the file none of the illustrative examples depicted in paragraph 4(c) of the Policy or, any other legitimate circumstance applies in this case in favor the Respondent. Rather, the inherently misleading disputed domain names resolved to websites prominently displaying the Complainant’s trademarks, purportedly offering the Complainant’s products, and generally impersonating the Complainant despite having no connection to the Complainant or any authority from the Complainant to take such actions.

Panels have held that the use of a domain name for illegitimate activity, here, claimed impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Moreover, the nature of the disputed domain names, incorporating the Complainant’s distinctive trademark with geographic terms, carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

D. 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 Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark. The confusion arises

blatantly by using the Complainant's trademark and logo in the disputed domain names and the corresponding websites to which the disputed domain names direct Internet users.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. The Panel finds that the Respondent targeted the Complainant and its trademarks when registering all the disputed domain names. On balance, the Respondent knew or should have known about the Complainant and its trademarks due to its reputation and distinctiveness. Such knowledge is strengthened by the later use of SKULL CANDY trademarks in the corresponding websites.

Further, the websites to which the disputed domain names redirected are currently inactive. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, and the composition of the disputed domain names, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

Panels have held that the use of a domain name for illegitimate activity, here, claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 names <skullcandyargentina.com>, <skullcandycanada.com>, <skullcandychile.com>, <skullcandycolombia.com>, <skullcandygreece.com>, <skullcandyisrael.com>, <skullcandyjapan.com>, <skullcandykuwait.com>, <skullcandymexico.com>, <skullcandyperu.com>, <skullcandyportugal.com>, <skullcandyuk.com> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: October 15, 2024