

ADMINISTRATIVE PANEL DECISION

Sealy Technology LLC v. Constantin Comendant
Case No. D2024-4744

1. The Parties

The Complainant is Sealy Technology LLC, United States of America, represented by Vice Cox & Townsend PLLC, United States of America.

The Respondent is Constantin Comendant, Germany.

2. The Domain Name and Registrar

The disputed domain name <sealysofa.com> (the “Disputed Domain Name”) is registered with DropCatch.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 18, 2024. On November 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 19, 2024, 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, NameBrightPrivacy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 20, 2024, 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 amendment to the Complaint on November 25, 2024.

The Center verified that the Complaint together with the amendment to the 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 November 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 16, 2024. The Respondent sent an email communication to the Center on November 20, 2024, but did not submit any formal response. Accordingly, the Center notified the Respondent’s default on December 26, 2024.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on January 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, Sealy Technology LLC, is an American company operating in the business of mattresses, beds, pillows and other comfort products.

The Complainant is the owner of numerous trademarks including the following:

- SEALY, United States of America word mark No. 2,271,114 registered on August 17, 1999, in classes 20 and 24;
- SEALY, United States of America word mark No. 1,733,089 registered on November 17, 1992, in class 20.

The Complainant also owns several domain names including the domain name <sealy.com> leading to the Complainant's official website.

The Disputed Domain Name was registered on November 3, 2024, and resolves to a parking page with pay-per-click ("PPC") links.

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 Name.

Notably, the Complainant contends that the Disputed Domain Name is identical or confusingly similar to a trademark in which it claims to have rights.

The Complainant further claims that the Respondent has no legitimate interests in respect of the Disputed Domain Name as :

- it did not grant any authorization to the Respondent to use the SEALY trademarks;
- the Disputed Domain Name was registered after the registration of the SEALY trademarks;
- the Disputed Domain Name resolves to a parked page with links to "mattress store", "buy mattress" and "mattress sale."

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant:

- the Disputed Domain Name was registered and is being used primarily with the intent to disrupt the business of the Complainant with knowledge of the Complainant by defrauding its retail partners;
- the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website linked to the Disputed Domain Name website or other online locations, by creating a likelihood of confusion with the Complainant's mark.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. However, the Respondent sent an email to the Center stating the following:

"I bought the domain for a personal onlineshop project with the intention to sell some products from China. You can keep the contact info and had no intention to disturb their brand."

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 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.

Based on the available record, the Panel finds 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 observes that the entirety of the Complainant's SEALY mark is reproduced within the Disputed Domain Name. In such cases, the domain name will normally be considered confusingly similar to the incorporated mark for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

Additionally, the Panel finds that the addition of another term – here, "sofa" – 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.

It is well established that generic Top-Level-Domains ("gTLDs"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

Based on the available record, 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 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 notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “Constantin Comendant”. The Respondent’s use and registration of the Disputed Domain Name was not authorized by the Complainant.

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. Even where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name incorporates the Complainant’s SEALY trademark in its entirety and merely adds the descriptive term “sofa”. In the Panel’s view, this term can be easily linked to the Complainant’s mattresses and sofa business. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), sections 2.5.2 and 2.5.3.

In this case, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the Disputed Domain Name. The Disputed Domain Name appears to resolve to a parking page containing PPC links such as “Buy Furniture” and “Futon sofa”, referring to competitors of the Complainant. Given the distinctive character of the Complainant’s mark and the Complainant’s comfort products business, the Panel finds that such sponsored links may capitalize on the reputation and goodwill of the Complainant’s mark or mislead Internet users, which cannot be considered as a use of the Disputed Domain Name in connection with a bona fide offering of goods or services. [WIPO Overview 3.0](#), section 2.9.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. On the contrary, the Respondent stated that it “bought the domain for a personal onlineshop project with the intention to sell some products from China.” Given the nature of the Disputed Domain Name, the Panel finds that the Respondent fails to show (preparations of) a bona fide offering of goods or services.

Based on the available record, 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.

As established above, the Disputed Domain Name appears to redirect to a parking page containing PPC links, some of which refer to competitors of the Complainant. In the circumstances of the present case, the Panel’s considers this to indicate that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant’s trademark. [WIPO Overview 3.0](#), section 3.2.4.

While the intention to earn click-through-revenue is not in itself illegitimate, the Panel finds that the use of the Disputed Domain Name that is confusingly similar to the Complainant’s trademark with the purpose of obtaining click-through-revenue constitutes bad faith use (irrespective of the amount of such revenues, and even if no revenues are obtained effectively). See *Mpire Corporation v. Michael Frey*, WIPO Case No. [D2009-0258](#); *L’Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc.*, WIPO Case No. [D2005-0623](#).

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.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name as:

the Disputed Domain Name incorporates the Complainant's distinctive trademark in its entirety, and combines it with a term directly referring to the Complainant's comfort product business;

some of the Complainant's trademarks predate the registration of the Disputed Domain Name by more than 20 years.

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as additional indications of the Respondent's bad faith.

Based on the available record, 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 <sealysofa.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: January 20, 2025