

ADMINISTRATIVE PANEL DECISION

Western Concepts, LLC v. Mina Ro, Perfect Galaxy
Case No. D2024-4842

1. The Parties

The Complainant is Western Concepts, LLC , United States of America ("United States"), represented by McAfee & Taft, A Professional Corporation, United States..

The Respondent is Mina Ro, Perfect Galaxy, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <sushineko.org> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 22, 2024. On November 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 25, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 26, 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 amended Complaint on November 28, 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 December 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 24, 2024.

The Center appointed Philippe Gilliéron as the sole panelist in this matter on January 3, 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 is a limited liability company that exploits in Oklahoma a Japanese restaurant under the name SUSHI NEKO since 1996.

The Complainant owns the United States verbal trademark SUSHI NEKO that was registered under No. 2479892 in class 42 (restaurant services) on August 21, 2001 with a first use in commerce in November 1996. It further holds the domain name <sushineko.com> since April 8, 1998.

On March 26, 2024, the Respondent registered the disputed domain name. The disputed domain name leads to a website where the Respondent holds itself out as the Complainant with an address and phone numbers identical to the ones of the Complainant's restaurant.

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 confusingly similar to its trademark as it entirely incorporates the terms SUSHI NEKO.

The Complainant further considers that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not known under that name and it has never been authorized to use the Complainant's trademark. Displaying a website wherein most of the content is copied verbatim from the Complainant's website cannot be considered a bona fide use of the disputed domain name.

The Complainant finally is of the view that the disputed domain name was registered and is being used in bad faith. Taking into the fact that the Complainant holds and uses the SUSHI NEKO trademark in commerce since 1996, respectively the domain name <sushineko.com> since 1998 and that the Respondent's website associated with the disputed domain name copies the Complainant's one, the Respondent was obviously aware of the Complainant's trademark when it decided to register the disputed domain name. The use of the disputed domain name as described above would amount to a use in bad faith. The Respondent's bad faith would further be highlighted by the fact that it has already been engaged in UDRP proceedings, which tends to demonstrate a pattern of such conduct.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "[...] decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

- (i) the disputed domain name is identical or confusingly similar to a trademark or a 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 has been registered and is being used in bad faith.

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.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical 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 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 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.

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.

In the present case, the Panel notes that the Respondent has registered the disputed domain name which leads to a website which displays the address and phone number of the Complainant's restaurant and largely copies the Complainant's website content. Furthermore, the Respondent, which is based in Viet Nam and has no connection to Oklahoma, has already been involved in UDRP proceedings, which tends to demonstrate a pattern of such conduct. [WIPO Overview 3.0](#), section 3.1.2.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name 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 name <sushineko.org> be transferred to the Complainant.

/Philippe Gilliéron/

Philippe Gilliéron

Sole Panelist

Date: January 17, 2025