

ADMINISTRATIVE PANEL DECISION

PosturePals Pty Ltd v. Comera Group Limited
Case No. D2024-4946

1. The Parties

The Complainant is PosturePals Pty Ltd, Vanuatu, represented by Ellery Tonner Law, United Kingdom.

The Respondent is Comera Group Limited, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <dynamictapeglobal.com> is registered with 123-Reg Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 29, 2024. On December 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 2, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 December 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2024. The Respondent sent two informal email communications to the Center on December 23, 2024 and January 5, 2025. On January 3, 2025, the Center notified the Parties that the Center will proceed to Panel Appointment.

The Center appointed Assen Alexiev as the sole panelist in this matter on January 13, 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.

On January 13, 2025, the Complainant submitted a supplemental filing. On January 17, 2025, the Respondent sent an email communication to the Center.

4. Factual Background

The Complainant was established in 2010. It manufactures and sells medical tape products, especially therapeutic taping products, under the brands “Dynamic Tape”, “PowerBand”, and “PosturePals”.

In 2020, the Complainant made a joint venture with the Respondent to sell Dynamic Tape, PowerBand, and PosturePals products. The Parties jointly established the company Dynamic Tape Global Limited, registered in England with company number 12815691, and entered into a shareholders agreement, pursuant to which the Complainant granted a license to Dynamic Tape Global Limited to use the intellectual property specified in the shareholders agreement for the duration of its term. The relationship between the Parties deteriorated in 2023, when they accused each other of breaches of their mutual obligations under the shareholders agreement. On October 16, 2023, the Complainant sent a letter to the Respondent which included a statement for the termination of the shareholders agreement on the basis that the company had not achieved the agreed financial target and that the Respondent had breached its contractual obligations. The Parties continued to exchange correspondence and have not settled their dispute yet. According to the information publicly available on the website of the United Kingdom Companies House about Dynamic Tape Global Limited,¹ the company continues to be active and its directors and persons with significant control are the legal representatives of the Complainant and of the Respondent.

The Complainant is the owner of the following trademark registrations for the sign DYNAMIC TAPE (the “DYNAMIC TAPE trademark”):

- the United States of America trademark DYNAMIC TAPE, with registration No. 4578286, registered on August 5, 2014, for goods in International Class 5; and
- the United Kingdom trademark DYNAMIC TAPE, with registration No. UK00003722739, registered on April 22, 2022, for goods in International Classes 5 and 10.

The Complainant operates the website at the domain name <dynamictape.com>, which offers for sale Dynamic Tape, PowerBand, and PosturePals products.

The disputed domain name was registered on October 17, 2023. It resolves to a website that is almost identical to the Complainant’s website at the domain name <dynamictape.com> and offers for sale the same products. The Terms of Use of the website specify that it is operated by Dynamic Tape Global Limited.

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.

The Complainant submits that the disputed domain name is confusingly similar to its DYNAMIC TAPE trademark, because it is a reproduction of this trademark.

¹ <https://find-and-update.company-information.service.gov.uk/company/12815691>

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it registered the disputed domain name after the termination of the shareholders agreement between the Parties, by which point its license in the Complainant's intellectual property had been revoked, so there was no legitimate basis for the Respondent's registration and use of the disputed domain name. In its pre-Complaint correspondence with the Respondent, the Complainant made a statement for termination of the shareholders agreement and claimed that it was entitled to do so, because of a Default Event (a defined term under the shareholders agreement), and because the Respondent had committed material breaches of the shareholders agreement by its failure to comply with its obligations.

The Complainant maintains that the Respondent is currently not a licensee of the Complainant and has not been otherwise authorized to use the Complainant's DYNAMIC TAPE trademark, which is an arbitrary term that has no meaning outside its use as a means to identify the Complainant as a source of medical tape.

The Complainant contends that the disputed domain name was registered and is being used in bad faith, because the Respondent registered and is using it primarily to profit from and exploit the Complainant's DYNAMIC TAPE trademark to misdirect Internet users to the website at the disputed domain name and to capitalize on the consumer recognition of the trademark. According to the Complainant, the Respondent's registration and maintenance of the disputed domain name amounts to a false representation that it is associated or connected with the Complainant.

B. Respondent

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

In its informal letter to the Center, the Respondent states that there is already a well-trodden legal dispute between the Parties, and that it has filed a mirror complaint against the Complainant's legal representative for attempting to wrest control over Dynamic Tape Global Limited. According to the Respondent, the dispute between the Parties is over 24 months old and there has already been a mediation proposal as required under the shareholders agreement. The Respondent draws attention to the fact that the legal representative of the Complainant continues to be a shareholder and director of Dynamic Tape Global Limited.

In the correspondence between the Parties, submitted with the Complaint, the Respondent stated that the Complainant's legal representative had committed various breaches of his fiduciary duties to Dynamic Tape Global Limited with the aim to cause the Default Event and thus to trigger the acquisition of its business by the Complainant. The Respondent stated that the terms of the shareholders agreement had been repudiated as a consequence of these breaches, and offered the Complainant to buy the shares of the latter in Dynamic Tape Global Limited, failing which it would request the court to dissolve the company.

6. Discussion and Findings

6.1. Procedural issue - Supplemental filing

As stated in the section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), paragraph 10 of the Rules vests the panel with the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition. Paragraph 12 of the Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel. In all such cases, panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some "exceptional" circumstance).

In the present case, the Complainant did not request leave from the Panel to submit its supplemental filing, and did not provide any reasons why it may have been unable to provide in its Complaint the information and arguments contained in this supplemental filing. The supplemental filing discusses certain provisions of the shareholders agreement between the Parties and their alleged effect on the issues of rights and legitimate interests and bad faith. All this discussion could have been included in the Complaint, as it is not grounded on evidence that was not available to the Complainant when the Complaint was filed, and there is nothing to suggest that the Complainant may have been unable to include it there due to some exceptional circumstance. Considering this, the Panel finds it unnecessary and inappropriate to take into consideration the Complainant's supplemental filing.

6.2. Substantive issues

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 3.0](#), section 1.7.

The Complainant has shown rights in respect of the DYNAMIC TAPE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the DYNAMIC TAPE trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the DYNAMIC TAPE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "global") 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 DYNAMIC TAPE trademark 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.

B. Rights or Legitimate Interests

The Parties to this dispute are no strangers to each other. They started a joint business in 2020, and in 2023 their relations deteriorated. Each of them claims that the other party has breached its obligations under the shareholders agreement and they shift to each other the responsibility as to why and how that happened. The Complainant claims having terminated this agreement, while the Respondent proposed the dissolution of the joint company or its buyout. The Respondent then registered the disputed domain name and associated it to the website of the joint company which still exists and operates this website. The directors and principal shareholders of this company are still the legal representatives of the Parties, and there is no evidence offered in the pleadings that any of them has attempted to dissolve the joint company, to resign from its position in it, or to sell its shares, which adds to the lack of clarity not only as to the events that have unfolded but insofar as they relate to the disputed domain name (e.g., given that it was registered after the receipt of the termination letter could just as plausibly be interpreted as retaliatory or as seeking to preserve one's position).

As can be seen from the above, the Parties are entangled in a complex business dispute that involves various factual and legal issues related to contractual interpretation, performance, breach, termination, consequences of termination, etc. The resolution of these issues is likely to require the application of various contractual and legal provisions, the examination and cross-examination of witnesses, preparation of expert reports, document discovery, and other means for taking evidence that are well beyond the limited tools available under the UDRP. The Panel refrains from taking any position on the merits of the contractual dispute between the Parties, which should be resolved in the appropriate forum. At the same time, the

resolution of the present dispute regarding the registration and use of the disputed domain name depends on the determination of some of these complex issues, and cannot be dealt with independently of them. See section 4.14.6 of the [WIPO Overview 3.0](#).

For these reasons, the Panel considers that within the framework of this proceeding it is not possible for the Complainant to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

For the same reasons, the Panel considers that it is impossible for the Complainant to establish within the framework of this proceeding that the disputed domain name was registered and is being used in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: January 21, 2025