

ADMINISTRATIVE PANEL DECISION

SMOON SAS v. Alex Winer

Case No. D2024-5143

1. The Parties

Complainant is SMOON SAS, France, represented by IP Twins, France.

Respondent is Alex Winer, Spain.

2. The Domain Name and Registrar

The disputed domain name <dansmaculotte.com> 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 December 13, 2024. On December 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 13, 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 GDPR privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on December 16, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 16, 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 Respondent of the Complaint, and the proceedings commenced on December 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 7, 2025. Respondent sent informal email communications to the Center on December 18, 23, and 26, 2024, and on January 10, 2025; he did not file a formal response.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on January 20, 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

Complainant is a company organized under the laws of France that is active in the feminine hygiene industry, manufacturing and distributing feminine hygiene products and sanitary protection goods, in particular menstrual panties.

Complainant has provided evidence that it is the registered owner, since September 28, 2023, of the following trademark in relation to its DANS MA CULOTTE brand:

- Word-/device trademark DANS MA CULOTTE, Intellectual Property Office France (INPI), registration number: 4046111, registration date: November 10, 2013, status: active.

Respondent, according to the Registrar Verification, is located in Spain. The disputed domain name was registered on July 25, 2024. At the time of rendering this decision, it resolves to a website at “www.dansmaculotte.com” with login requirements by supplying a username and a password. Complainant, however, has demonstrated that, at some point before the filing of the Complaint, the disputed domain name resolved to a mirror website of the previous website under the disputed domain name owned by Complainant which reproduced Complainant’s DANS MA CULOTTE trademark without any authorization to do so.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, Complainant contends that it is, inter alia, the official supplier of menstrual swimwear to the French swimming Federation and has partnered in the past with retail giants such as Decathlon or Monoprix.

Complainant submits that the disputed domain name is identical to Complainant’s DANS MA CULOTTE trademark, as it reproduces the latter without addition or deletion of any letter or word. Further, Complainant provides that it became the owner of the DANS MA CULOTTE trademark following its acquisition of the intellectual property assets of the liquidated company “Marie-Noëlle”, which was meant to include the disputed domain name and associated website owned by the same company. However, Complainant claims that due to an administrative error, the disputed domain name lapsed before Complainant could acquire it and Respondent then registered it. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent apparently has acquired no trademark in the term/phrase “dans ma culotte” which could have granted Respondent rights in the disputed domain name, and there is no evidence that Respondent has been commonly known by the disputed domain name as an individual, business, or other organization, (2) Respondent reproduces Complainant’s earlier registered DANS MA CULOTTE trademark in the disputed domain name without any license or authorization from Complainant, (3) Respondent not only registered the disputed domain name due to an administrative error, but also mirrored at some point before the filing of the Complaint the previous website associated with the disputed domain name, which is likely to mislead Internet users, and (4) the adoption and use of Complainant’s DANS MA CULOTTE trademark predates by far the registration of the disputed domain name. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Respondent actively placed a backorder on the disputed domain name demonstrating that Respondent’s choice of the disputed domain name cannot have been accidental and must have been influenced by the knowledge of Complainant and its earlier DANS MA CULOTTE trademark, (2) Respondent took steps to mirror the previous website associated with the disputed domain name, in the hope of defrauding Internet users of average attention, (3) Complainant, therefore, submits that it is highly likely that Respondent chose the disputed domain name because of its identity with or similarity to Complainant’s DANS MA CULOTTE trademark, apparently in the hope and expectation that Internet users

searching for Complainant's services and products would instead come across Respondent's disputed domain name, (4) Complainant's DANS MA CULOTTE trademark registration significantly predates the registration date of the disputed domain name, and (5) the disputed domain name at some point resolved to a website mirroring the official website of Complainant previously available at the disputed domain name, and reproducing Complainant's DANS MA CULOTTE trademark, which must necessarily be regarded as bad faith use of the disputed domain name under the Policy.

B. Respondent

Respondent did not formally reply to Complainant's contentions, but sent informal email communications to the Center on December 18, 23, and 26, 2024, stating e.g. that (1) he wanted to suspend the UDRP proceeding for settlement negotiations (to which Complainant finally did not agree), and (2) he would gladly transfer the disputed domain name if he was reimbursed for the expenses incurred in purchasing it at auction. Respondent reiterated this position in its further communication to the Center on January 10, 2025.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's formal default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

First, 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 Complainant's DANS MA CULOTTE 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.

Complainant has shown rights in respect of its DANS MA CULOTTE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Also, the entirety of such trademark is reproduced within the disputed domain name, without any additions or amendments whatsoever. Accordingly, the disputed domain name is identical to Complainant's DANS MA CULOTTE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

B. Rights or Legitimate Interests

Second, paragraph 4(c) of the Policy provides a list of circumstances in which 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

In particular, Respondent has not been authorized to use Complainant's DANS MA CULOTTE trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the term/phrase "dans ma culotte" on its own. Quite to the contrary, the disputed domain name, at some point before the filing of the Complaint, resolved to a mirror website of the previous website under the disputed domain name owned by Complainant which reproduced Complainant's DANS MA CULOTTE trademark without any authorization to do so. Such use of the disputed domain name, therefore, qualifies neither as bona fide nor as legitimate noncommercial or fair use within the meaning of the Policy, not even so under the so-called Oki Data principles which would indeed have required Respondent e.g. to accurately and prominently disclose on such website the nonexistent relationship between Respondent and Complainant as the DANS MA CULOTTE trademark holder, which Respondent obviously did not. [WIPO Overview 3.0](#), section 2.8. Moreover, given the identical nature of the disputed domain name to Complainant's trademark, such identity is likely to be perceived as impersonation and carries a high risk of implied affiliation regardless of any potential disclaimer. Finally, UDRP panels have long held that the use of a domain name for illegitimate activity (here, Complainant's impersonation/passing-off by Respondent) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

C. Registered and Used in Bad Faith

Third, 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.

The circumstances to this case leave no doubts that Respondent was fully aware of Complainant's rights in its DANS MA CULOTTE trademark when registering the disputed domain name and that the latter is clearly directed thereto; this is e.g. evidenced by the fact that Respondent not only actively placed a backorder on the disputed domain name, but subsequently used it to resolve to a website mirroring the official website of Complainant previously available at the disputed domain name, and, thereby, reproducing Complainant's DANS MA CULOTTE trademark. Moreover, using the disputed domain name, which is even identical to Complainant's DANS MA CULOTTE trademark, to run such a mirror website without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's DANS MA CULOTTE trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

The Panel, therefore, finds that Complainant has established the third element of the Policy, too.

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, <dansmaculotte.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: January 28, 2025