

ADMINISTRATIVE PANEL DECISION

Dansko, LLC v. Nadison Cherish
Case No. D2024-5212

1. The Parties

Complainant is Dansko, LLC, United States of America ("United States"), represented by Cozen O'Connor, United States.

Respondent is Nadison Cherish, United States.

2. The Domain Name and Registrar

The disputed domain name <dansko-clogs-women.com> is registered with Gname.com Pte. Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 18, 2024. On December 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 20, 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 Registrant / Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on December 23, 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 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 Respondent of the Complaint, and the proceedings commenced on January 2, 2025. In accordance with the Rules, paragraph 5, the due date for Response was January 22, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 23, 2025.

The Center appointed Phillip V. Marano as the sole panelist in this matter on January 29, 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 comfort footwear company based in Pennsylvania, United States. Complainant offers its clogs, boots, sandals, flats, and sneakers through its official <dansko.com> domain name and website. Complainant owns valid and subsisting registrations for DANSKO standard character, stylized, and design trademarks in the United States, including the trademark for DANSKO (Reg. No. 3,265,194) registered on July 17, 2007, with the earliest priority dating back to January 1991.

Respondent registered the disputed domain name on November 29, 2024. At the time the Complaint was filed, the disputed domain name resolved to a website that prominently features Complainant's DANSKO stylized trademarks and purports to offer for sale Complainant's authentic comfort footwear.

5. Parties' Contentions

A. Complainant

Complainant asserts ownership of the DANSKO trademark and has adduced ample evidence of trademark registrations in the United States, with earliest priority dating back to January 1991. The disputed domain name is virtually identical to Complainant's DANSKO trademark, according to Complainant, apart from the descriptive term "clogs women", which only increases the likelihood of confusion as it indicates it is a place to shop for Complainant's women's footwear.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the lack of any evidence that Respondent, identified by the Registrar as "Nadison Cherish", is commonly known as "Dansko"; Respondent's use of a privacy or proxy service in an effort to evade the consequences of registering the disputed domain name; and Respondent's use of the disputed domain name in connection with website content prominently featuring Complainant's DANSKO trademarks in an attempt to confuse consumers into believing Respondent is associated with Complainant.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: Respondent's constructive notice of Complainant's longstanding, pre-dated, and registered trademark rights; Respondent's website content that attempts to pass itself off as a third party well-known online ecommerce platform; Respondent's concealment of its true identity through the use of a privacy registration service; Respondent's website content that likely attempts to fraudulently obtain personally identifiable information from individuals believing that the disputed domain name is actually related to Complainant and/or a third party.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. the disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;

- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

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. Complainant has shown rights in respect of its DANSKO trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's DANSKO trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant's DANSKO trademark because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the entirety of the trademark is contained within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name [...] [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar [...]"). In regard to gTLDs, such as ".com" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

Although the addition of other terms, here, "clogs" and "women", may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

B. Rights or Legitimate Interests

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 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 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. It is evident from the record that Respondent, identified by Whois data for the disputed domain name as "Nadison Cherish", is not commonly known by the disputed domain name or Complainant's DANSKO trademark.

Panels have also held that the use of a domain name for illegal activity, here, claimed phishing and impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. In particular, Complainant has proffered evidence and the Panel has conducted a limited investigation of Respondent's website content to establish that it: (i) prompted web browser "Dangerous Site" anti-phishing warnings for the Panel; (ii) misappropriated Complainant's stylized DANSKO trademarks in an attempt to pass itself off as Complainant, ostensibly offering for sale to visitors Complainant's authentic comfort footwear products likely in an attempt to phish for their personal and financial information; and (iii) failed to identify any disclaimer or statement regarding the relationship (or lack thereof) between Respondent and Complainant, noting also that Complainant has averred Respondent is not authorized reseller or distributor of Complainant.

The Panel therefore 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.

Where parties are both located in the United States and the complainant has obtained a federal trademark registration pre-dating a respondent's domain name registration, panels have applied the concept of constructive notice, subject to the strength or distinctiveness of the complainant's trademark, or circumstances that corroborate respondent's awareness of the complainant's trademark. [WIPO Overview 3.0](#), section 3.2.2. In this Panel's view, when the disputed domain name was registered in 2024, Respondent had constructive knowledge of Complainant's pre-existing rights in Complainant's DANSKO trademarks under United States law. See e.g., *Champion Broadcasting System, Inc. v. Nokta Internet Technologies*, WIPO Case No. [D2006-0128](#) (Applying the principle of constructive notice where both parties are located in the United States). Indeed, circumstances in this case corroborate Respondent's actual knowledge of Complainant and Complainant's DANSKO trademark, including Respondent's website content that made replete and prominent unauthorized use of Complainant's DANSKO stylized and design trademarks in an attempt to impersonate Complainant.

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.

Specifically, panels have held that the use of a domain name for illegal activity, here, claimed phishing and impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. As discussed above, Complainant has proffered evidence and the Panel has conducted a limited investigation of Respondent's website to establish that: (i) prompted web browser "Dangerous Site" anti-phishing warnings for the Panel; and (ii) misappropriated Complainant's stylized DANSKO trademarks in an attempt to pass itself off as Complainant, ostensibly offering for sale to visitors Complainant's authentic

comfort footwear products likely in an attempt to phish for their personal and financial information. In any event, the Respondent's misleading use clearly falls within the meaning of bad faith as outlined in paragraph 4(b)(iv) of the Policy.

Moreover, the Panel notes that the Center's attempts to provide Written Notice of the Complaint failed, according to the courier service, due to a "bad address" where "consignee premises [were] closed" in numerous delivery attempts. To that end, prior panel determinations agree, the use of false or non-functional registration data in connection with a disputed domain name may further support a finding of bad faith registration and use. See e.g., [WIPO Overview 3.0](#), section 3.2.1. Here, noting the composition and use of the disputed domain name, the apparently false or non-functional registration data further supports the Panel's above finding of bad faith.

The Panel therefore finds that 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 <dansko-clogs-women.com> be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: February 11, 2025