

ADMINISTRATIVE PANEL DECISION

The Founders Inc. v. Niels Schuhmacher, Zinari
Case No. D2024-5281

1. The Parties

The Complainant is The Founders Inc., Republic of Korea, represented by Marq Vision, Inc., United States of America.

The Respondent is Niels Schuhmacher, Zinari, Germany.

2. The Domain Name and Registrar

The disputed domain name <anuaofficial.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 23, 2024. On December 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 23, 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 (Contact Privacy Inc. Customer 0172245138) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 24, 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 December 27, 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 January 6, 2025. In accordance with the Rules, paragraph 5, the due date for Response was January 26, 2025. The Respondent sent email communications to the Center on December 28, 2024, and January 6, 2025, respectively. The Complainant requested suspension of the proceedings on January 9, 2025, and the proceedings were suspended until February 6, 2025. The proceedings were reinstituted on February 6, 2025 upon the Complainant’s request and the due date for the Response was February 23, 2025. The Respondent did not submit a formal Response.

The Center appointed Adam Taylor as the sole panelist in this matter on February 26, 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 operates an international skincare business under the mark ANUA, which was recognised as a “2024 Amazon Top Brand”.

The Complainant owns a number of registered trade marks for ANUA including International Registration No. 1546316, registered on July 1, 2020, in class 3.

The Complainant operates a website at “www.anua.kr”.

The disputed domain name was registered on August 27, 2024.

The disputed domain name has been used to resolve to a website that was branded with the Complainant’s stylised trade mark / logo and purported to offer the Complainant’s branded products for sale using the Complainant’s product photos.

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.

B. Respondent

In its informal Response, the Respondent contends that the Complainant has not satisfied all of the elements required under the Policy for a transfer of the disputed domain name.

Notably the Respondent contends that:

- the disputed domain name was registered and used in good faith as part of a legitimate business selling cosmetic products sourced from an official supplier;
- the Respondent relied on the supplier’s assurances that the products were authorised for resale;
- the Respondent had no reason to believe there could be a conflict with the Complainant’s trade mark;
- the Respondent never intended to mislead consumers or infringe the Complainant’s rights;
- the Complainant’s trade marks include specific graphical elements and branding, which differ significantly from the logo and design used on the Respondent’s website;
- the generic term “Anua” does not inherently suggest an exclusive association with the Complainant and the disputed domain name was chosen to reflect the authenticity of the products offered, not to create confusion or imply affiliation;
- the Respondent’s actions are protected under applicable laws governing fair use and good faith in relation to domain names;
- the Respondent’s shop was covered by a business liability insurance policy, underscoring the Respondent’s commitment to operating within the law;
- the disputed domain name is no longer in active use as the business associated with the domain has been discontinued due to lack of profitability; and
- the Respondent is prepared to resolve this dispute by transferring the disputed domain name to the Complainant in full and final settlement.

6. Discussion and Findings

Consent to Remedy – Preliminary Issue

The Respondent has indicated in the Response that it consents to transfer of the disputed domain name to the Complainant.

Many panels will order transfer solely on the basis of a consent to transfer by the respondent on the record, but panels may still find it appropriate to proceed to a substantive decision on the merits in certain circumstances. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.10.

In this case, the Panel has decided to proceed to a substantive determination because: (i) the Panel finds a broader interest in recording a substantive decision on the merits – e.g., so that other future UDRP panels can take the matter into account when considering whether there is a pattern of bad faith conduct under 4(b) of the Policy; (ii) while consenting to the requested remedy, the Respondent has expressly disclaimed any bad faith and has imposed a condition that the transfer is in full and final settlement of all claims against the Respondent; and (iii) the Parties were unable to reach a settlement.

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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark 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 confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, “official”) 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 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 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 recognised 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.

As to paragraph 4(c)(i) of the Policy, the Respondent claims that it is reselling the Complainant's own goods. If so – and the Respondent has not provided any evidence that it did actually sell the Complainant's genuine products – the consensus view of UDRP panels is that to establish a bona fide offering of goods or services in such circumstances, a respondent must comply with certain conditions (the “Oki Data requirements”).

In this case, the Panel considers that the Respondent has failed to comply with the Oki Data requirement to accurately and prominently disclose the Respondent's relationship with the trade mark holder. On the contrary, as further discussed in section 6.C. below, the Panel considers that, notwithstanding its contentions otherwise, the Respondent has used the disputed domain name to impersonate the Complainant.

Furthermore, the disputed domain name comprises the Complainant's distinctive mark plus the term “official”, which is likely to be seen as tending to suggest sponsorship or endorsement by the trade mark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Respondent claims that it sourced its products from an official supplier and in reliance on that supplier's assurances that the products were authorised for resale. However, even if true, such authorisation would not have justified the Respondent impersonating the Complainant in connection with resale of those products, as discussed above.

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.

Given the evidence of use of the disputed domain name, which includes the Complainant's distinctive mark plus the word “official”, for a website effectively impersonating the Complainant including by use of the Complainant's ANUA logo and by reproducing the Complainant's product photographs without permission, the Panel concludes that the Respondent has intentionally created a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

The Panel rejects the following contentions of the Respondent for the following reasons.

That the Respondent had no reason to believe there could be a conflict with the Complainant's trade mark and never intended to mislead consumers or infringe the Complainant's rights – this contention is implausible, given that, amongst other things, the disputed domain name comprised the Complainant's distinctive mark plus the word “official”, which the Panel considers would be likely to confuse consumers into thinking they had reached an official source for the Complainant's products, not to mention the Respondent's prominent use of the Complainant's logo and product photos. Moreover, the Panel notes the Respondent's website includes a small copyright notice “© 2024, Anua” at the bottom of the page, which is likely to go unnoticed by consumers, but in any event tends to reinforce the false association with the Complainant, rather than clarify any potential reseller relationship (if applicable).

That the Complainant's trade marks include specific graphical elements and branding, which differ significantly from the logo and design used on the Respondent's website – the additional elements are simply the letters of the Complainant's mark in Korean script, the Respondent's omission of which is immaterial and, in any case, the Respondent has branded its website with the identical unadorned stylised English-alphabet version of the Complainant's mark ANUA that the Complainant uses on its own website.

That the “generic term ‘Anua’” does not inherently suggest an exclusive association with the Complainant and the disputed domain name was chosen to reflect the authenticity of the products offered, not to create confusion or imply affiliation – the Respondent has provided no evidence to indicate that the highly distinctive word “Anua” has become generic, i.e., a common name for a product or service, and it is plain from all of the circumstances of this case that the Respondent selected the term not to reflect authenticity but to pretend to be an “official” source for the Complainant’s products.

That the Respondent’s actions are protected under applicable laws governing fair use and good faith in relation to domain names – for all the reasons given above, the Respondent has fallen short of demonstrating good faith in this case.

That the Respondent’s shop was covered by a business liability insurance policy, underscoring the Respondent’s commitment to operating within the law – even if this unsupported assertion is true, it is irrelevant as the facts of this case clearly demonstrate that the Respondent has registered and used the disputed domain name in bad faith for the purposes of 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 <anuaofficial.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: March 12, 2025