ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Hunza G Limited v. Barry Clive, Maxxam Textiles ltd
Case No. D2025-0461

1. The Parties

The Complainant is Hunza G Limited, United Kingdom, represented by Briffa Legal Limited, United Kingdom.

The Respondent is Barry Clive, Maxxam Textiles ltd, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <originalcrinkle.com> is registered with eNom, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 5, 2025. On February 6, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 6, 2025, 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 Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 17, 2025, 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 February 20, 2025.

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 February 21, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 13, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 18, 2025.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on March 24, 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 company incorporated on May 4, 2018, under the laws of England and Wales, with number 11346255, and having its registered office in London, United Kingdom. The Complainant is in the business of designing and offering swimwear and other clothing for sale under the brand identities formed by the HUNZA G and THE ORIGINAL CRINKLE trademarks. The Complainant reports that it has experienced success in the marketplace such that its products are sold in the top 250 retail stores in the world, including Harrods, Selfridges, Net-a-Porter, Farfetch and SaksFifthAvenue. The Complainant reported turnover of almost GBP 27 million for the financial year ending May 31, 2024, an increase from just over GBP 22 million in the preceding year. The Complainant notes that it has a substantial online presence with over 499,000 followers on Instagram, adding that it is regularly featured in the online press.

The Complainant is the owner of multiple registered trademarks in respect of the mark THE ORIGINAL CRINKLE, including for example, United Kingdom Registered Trademark Number 3771978 for the word mark THE ORIGINAL CRINKLE, registered on June 24, 2022 in Classes 18, 24, 25, and 35.

The disputed domain name was registered on May 4, 2024. The website associated with the disputed domain name is a domain name reseller's parking page, which promotes the business of the reseller. Little is known about the Respondent, which has not participated in the administrative proceeding, other than that it appears to be a United Kingdom limited company together with one of its directors, having an address in London, United Kingdom. The Panel has consulted United Kingdom Companies House in respect of the said limited company and has noted the status of the said director, and that said company's "nature of business" SIC code relates to the manufacture of knitted and crocheted fabrics, such that it appears to be in the same or a similar line of business to the Complainant. With regard to the Panel undertaking such limited factual research into matters of public record, see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), section 4.8.

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 its mark is well-known and distinguishes the Complainant's goods throughout the world as a result of the Complainant's activities and extensive use. The Complainant asserts that the disputed domain name is confusingly similar, if not identical, to the Complainant's mark.

The Complainant submits that before notice to the Respondent of the dispute, the Respondent has not used or made demonstrable preparations to use the disputed domain name for anything other than a parking page, adding that the Respondent has neither been commonly known by the disputed domain name nor is making a legitimate non-commercial or fair use of it.

The Complainant contends that the Respondent had the Complainant's mark in mind when it registered the disputed domain name, given that the mark is distinctive and well-known, with a reputation, which indicates that the Respondent in all likelihood knew or should have known of its existence, adding that the incorporation of such a mark into the disputed domain name without plausible explanation can be an indication of bad faith in and of itself.

B. Respondent

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

6. Discussion and Findings

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 a trademark or service mark for the purposes of the Policy. WIPO Overview 3.0, section 1.2.1.

The Panel finds the mark is recognizable 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. The Panel considers that the absence of the definite article in the disputed domain name (despite its presence in the Complainant's mark) is of no particular significance, given that the disputed domain name reproduces the distinctive and recognizable elements "original" and "crinkle" in the exact order as they are found in the Complainant's mark. Likewise, the absence of spaces in the disputed domain name is not of any significance, given that spaces are not permitted in domain names for technical reasons.

It is well established that the generic Top-Level Domain ("gTLD"), in this case ".com", does not need to be taken into consideration on the question of identity or confusing similarity under the Policy. WIPO Overview 3.0, section 1.11.1.

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 notes in particular that the near identity between the Complainant's distinctive trademark (consisting of an unusual combination of dictionary words), and the subsequently registered disputed domain name, suggest that the selection of the latter by the Respondent is unlikely to be a coincidence. In the absence of any explanation from the Respondent for such selection, the Panel cannot conceive of any rights or legitimate interests that the Respondent might have possessed in the disputed domain name.

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.

In the present case, the Panel notes that the Respondent registered the disputed domain name some two years after the Complainant's mark was registered and has merely parked it with a domain name reseller. The identity between the distinctive elements of the Complainant's mark, comprised of two dictionary words not normally placed together, and the disputed domain name, indicate to the Panel that it is extremely unlikely that the Respondent might have registered the disputed domain name by coincidence, and in particular, without any awareness of the Complainant and its mark. The fact that the Respondent appears to be in the same or a very similar line of business to the Complainant, and that its address is fewer than 10 miles distant from the Complainant's own address, in the same city, reinforces this impression. No explanation has been provided by the Respondent as to why it registered the disputed domain name, and in the absence of any actual explanation or any apparent good faith reason, the Panel concludes that the disputed domain name was registered in bad faith.

Turning to the use of the disputed domain name, the Panel notes that this is effectively being "passively held" by being parked with a domain name reseller. From the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. While panelists look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. WIPO Overview 3.0, section 3.3.

First on this topic, in common with the panel in *Hunza G Limited v. DOMAIN ADMINISTRATOR c/o Buy this domain on Dan.com*, WIPO Case No. D2024-1636, the Panel finds that the Complainant's mark is highly distinctive. As far as reputation is concerned, the Panel considers that it would have been useful to have been provided with better and clearer copies of the actual evidence of reputation to which the Complaint alludes, namely more examples of the claimed regular features in the online press, and actual evidence of the claimed substantial number of Instagram followers. In the case of the former, at least two of the Complainant's social media screenshots are suggestive of online third party fashion magazine coverage, but they are not captioned or otherwise specifically discussed. In the case of the latter, the Panel has been able to verify the actual number of the Complainant's Instagram followers from Instagram itself, currently some 504,000 accounts. The screenshots which the Complainant did produce are sufficient to demonstrate that the Complainant's THE ORIGINAL CRINKLE mark has been promoted on multiple occasions to this substantial number of followers. Taken in tandem with the extracts from the Complainant's website, and its reported sales, the Panel finds that this evidence is sufficient to demonstrate that the Complainant's THE ORIGINAL CRINKLE mark possesses a substantial reputation.

Secondly, it must be noted that the Respondent neither submitted any Response, nor provided any evidence of actual or contemplated good-faith use. Thirdly, the Panel notes that the Respondent did not conceal its identity, but that the disclosed Respondent identity itself indicated that the Respondent is in a similar or related industry and is based in almost the same location as the Complainant. Fourthly, and finally, the Panel considers that, in the absence of any submissions or evidence to the contrary, it is implausible that the disputed domain name might be put to any good faith use in the Respondent's hands. Consequently, the Panel concludes that the disputed domain name has been used in bad faith.

The Respondent has failed to engage with the present administrative proceeding and consequently has not presented the Panel with any explanation for its registration and use of the disputed domain name that might have altered the conclusions which the Panel has reached above.

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 <originalcrinkle.com> be transferred to the Complainant.

/Andrew D. S. Lothian/
Andrew D. S. Lothian
Sole Panelist
Date: April 7, 2025