

ADMINISTRATIVE PANEL DECISION

Rothy's, Inc. v. Nadison Cherish
Case No. D2025-0955

1. The Parties

The Complainant is Rothys's, Inc., United States of America ("United States"), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Nadison Cherish, United States.

2. The Domain Names and Registrar

The disputed domain names <rothys-usa.com> and <rothys-us.com> are 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 March 7, 2025. On March 10, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 11, 2025, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names that differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 11, 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 the same date.

The Center verified that the Complaint, as amended, 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 March 12, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 1, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 3, 2025.

The Center appointed Steven Auvil as the sole panelist in this matter on April 11, 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 direct-to-consumer fashion company founded in 2012 in San Francisco, California, United States, and formally launched in 2016. Known for products made from recycled plastic water bottles and post-consumer recycled materials, the Complainant's company began as a women's shoe company and has since expanded to handbags and a men's shoe line, with 27 stores across the United States and London, United Kingdom.

The Complainant owns various trademark registrations for the ROTHY'S brand, including: United Kingdom registration No. UK00914267405 for ROTHY'S, registered October 14, 2015; United States registration No. 4941653 for ROTHY'S, registered April 19, 2016; and European Union registration No. 018065985 for ROTHY'S, registered October 4, 2019.

The Complainant also owns and uses the domain name <rothys.com> for the promotion of its ROTHY'S brand.

The Respondent registered the disputed domain name <rothys-usa.com> on February 14, 2025, and the disputed domain name <rothys-us.com> on March 1, 2025. They resolve to websites copying the look and feel and some content of the Complainant's official website, displaying the Complainant's ROTHY'S mark and logo substantially similar to the one used on the Complainant's website.

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 names.

The Complainant first contends that the disputed domain names are confusingly similar to the Complainant's ROTHY'S mark. The Complainant alleges that the disputed domain names contain the entirety of the Complainant's ROTHY'S mark deleting only the apostrophe and adding a hyphen and the geographic terms "us" and "usa," which the Complainant contends are both abbreviations for the United States. The Complainant further contends that the disputed domain names are confusingly similar to the ROTHY'S mark regardless of the removal of the apostrophe and the addition of a hyphen in the disputed domain names.

The Complainant next contends that the Respondent has no rights or legitimate interests in the disputed domain names because the Complainant has never assigned, granted, licensed, sold, transferred, or authorized the Respondent to register or use the ROTHY'S mark in any manner. The Complainant further alleges that the Respondent has never been known by the disputed domain names, nor has the Respondent acquired any trade and service mark rights in either of the disputed domain names.

Finally, the Complainant alleges that the disputed domain names were registered and being used in bad faith. The Complainant contends that the Respondent is using the disputed domain names in connection with websites that falsely purport to be websites associated with the Complainant, going as far as using the ROTHY'S mark on websites and including images of the same goods as those offered by the Complainant, thereby creating a likelihood of confusion with the Complainant.

The Complainant requests that the disputed domain names be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following to obtain relief:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which the complainant has rights;
- (ii) that the 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.

In view of the Respondent's failure to submit a Response, the Panel is entitled to accept as true the allegations set forth in the Complaint (unless the evidence is clearly contradictory), and to derive reasonable inferences from the evidence presented. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#).

Based on the foregoing guidance, the Panel makes the following findings and conclusions based on the allegations and evidence contained in the Complaint, as amended, and reasonable inferences drawn from the evidence presented.

A. Identical or Confusingly Similar

It is well accepted that the first element of paragraph 4(a)(i) of the Policy 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 names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The evidence submitted by the Complainant supports the conclusion that it has shown rights in respect of a trademark or service mark for the purposes of the Policy. The Complainant owns numerous registered trademarks for ROTHY'S. [WIPO Overview 3.0](#), section 1.2.1.

As set forth in [WIPO Overview 3.0](#), section 1.7, when the entirety of an asserted mark is reproduced within the disputed domain names, or “at least a dominant feature of the relevant mark is recognizable in the domain name,” the disputed domain names are deemed confusingly similar to the asserted mark for the purposes of the Policy. Further, “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise)” does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8.

The disputed domain names consist of the suffixes “us” and “usa” joined by a hyphen to the Complainant's ROTHY'S mark, less the included apostrophe, but these do not prevent a finding of confusing similarity for the purposes of the Policy. First, the omission of the apostrophe in the ROTHY'S mark in the disputed domain names can be disregarded in the confusingly similarity analysis as apostrophes cannot be represented in a domain name. See *Marley's Mutts Dog Rescue v. Nick Peplow, Mango Tango Ltd*, WIPO Case No. [D2025-0492](#). Second, the term “rothys” is the dominant part of the disputed domain names, and the added terms “us” and “usa” may be considered as geographical abbreviations for the United States. Thus, the Panel finds that the Complainant's ROTHY'S mark is recognizable in the disputed domain names

and the suffixes “us” and “usa”— along with the connecting hyphen—do not prevent a finding of confusing similarity. See *Syngenta Participations AG v. Syngenta Agrichemical Company, Syngenta Agrichemical Company*, WIPO Case No. [D2022-3308](#).

Additionally, as set forth in section 1.11.1 of the [WIPO Overview 3.0](#), the applicable generic Top-Level Domain (“gTLD”) (e.g., “.com”, “.site”, “.info”, “.shop”) is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. As such, the use of “.com” gTLD in the disputed domain names have no bearing on the confusing similarity analysis.

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 in accordance with paragraph 4(a)(i) of the Policy. Such circumstances include:

(i) before any notice of the dispute, the respondent used, or prepared to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services;

(ii) the respondent (as an individual, business, or other organization) is commonly known by the disputed domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

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 domain names may result in the difficult task of “proving a negative.” As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests in a disputed domain name, 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 evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the evidence and arguments of record, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. In addition to the confusing similarity between the disputed domain names and the Complainant’s ROTHY’S mark, the Complainant submits unrebutted evidence that the Respondent is using the disputed domain names in an attempt to pass itself off or impersonate the Complainant. Panels have held that the use of domain names for illegitimate activity, such as impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Respondent has not attempted to rebut the Complainant’s prima facie showing; in fact, the Respondent has not come forward with any evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

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 non-exclusive circumstances that, if found by the Panel to be present, is evidence of the registration and use of a domain name in bad faith. Such circumstances include, among others, where “the

respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor,” and where “by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on the respondent’s website or location.” [WIPO Overview 3.0](#), section 3.1.

Additionally, section 3.2.1 of the [WIPO Overview 3.0](#) provides that “[p]articular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant’s area of activity or natural zone of expansion); [...] (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent’s choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant.”.

In the present case, the Panel concludes that the Respondent has registered and used the disputed domain names in bad faith. The disputed domain names incorporate the entirety of the Complainant’s registered ROTHY’S mark (sans the apostrophe) with additional terms “us” and “usa.” This suggests and the Panel finds that the websites at the disputed domain names seek to mislead consumers into believing the websites are operated or endorsed by the Complainant. This conclusion is reinforced by the impersonating nature of the content exhibited at these websites. The Panel further finds that the Respondent more likely than not knew of the Complainant’s ROTHY’S mark at the time of registering the disputed domain names and endeavored to unfairly capitalize on the mark for commercial gain. Accordingly, the Panel finds that the disputed domain names were registered and are being used in bad faith.

The Panel therefore 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 names <rothys-usa.com> and <rothys-us.com> be transferred to the Complainant.

/Steven Auvil/

Steven Auvil

Sole Panelist

Date: April 25, 2025