ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Rabbitsvault Corporation v. Byron Alexander, sugar LTM
Case No. D2025-1444

1. The Parties

The Complainant is Rabbitsvault Corporation, United States of America ("United States"), internally represented.

The Respondent is Byron Alexander, sugar LTM, United States.

2. The Domain Name and Registrar

The disputed domain name <plugsandplays.com> (the "Disputed Domain Name") is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 8, 2025. On April 9, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 9, 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 April 10, 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 April 10, 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 April 16, 2025. In accordance with the Rules, paragraph 5, the due date for Response was May 6, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 19, 2025.

The Center appointed Lynda M. Braun as the sole panelist in this matter on May 22, 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 California, United States corporation that owns the following registered trademarks through the United States Patent and Trademark Office ("USPTO"): PLUGPLAY, United States Registration No. 7,296,663, registered on February 6, 2024, with a first use in commerce of May 9, 2018, in International Class 35 for online retail store services featuring apparel and smoking accessories; and P (stylized mark), United States Registration No. 7,296,664, registered on February 6, 2024, with a first use in commerce of May 9, 2018, in International Class 35 for online retail store services featuring apparel and smoking accessories (hereinafter collectively referred to as the "PLUGPLAY Mark"). [1]

The Disputed Domain Name was registered on November 21, 2022, and resolves to a website that provides confusingly similar versions of the Complainant's products, including some that contained THC. [2] The Respondent's website prominently displays the PLUGPLAY Mark on multiple webpages and uses a similar visual design as does the Complainant's website "www.plugplay.com".

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:

- the Disputed Domain Name is confusingly similar to the Complainant's PLUGPLAY Mark because the Disputed Domain Name substantially incorporates the PLUGPLAY Mark

- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, among other things, the Complainant has not authorized the Respondent to register a domain name containing the PLUGPLAY Mark, and the Respondent's website associated with the Disputed Domain Name purportedly offers counterfeit versions of the Complainant's products and some of those products contain THC; and

- the Disputed Domain Name was registered and is being used in bad faith because, among other things, the Respondent uses the Disputed Domain Name to feature goods on its website that resemble the goods sold by the Complainant on its official website for the purpose of deceiving unsuspecting consumers to believe that the goods are owned, endorsed, or otherwise affiliated with the Complainant, and the Respondent appears to be engaged in the sale of counterfeit and unauthorized THC products.

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

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[1] The Panel finds that the Complainant had common law rights in the PLUGPLAY Mark based on its first use in commerce but should have included support for such rights in the Complaint.

[2] THC is tetrahydrocannabinol, the main psychoactive compound in cannabis, and is responsible for the "high" or intoxication associated with cannabis use.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

(i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and

(iii) the Disputed Domain Name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the PLUGPLAY Mark as explained below.

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. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), section 1.7.

The Complainant has established rights in the PLUGPLAY Mark based its registered trademarks for the PLUGPLAY Mark and its first use in commerce prior to the USPTO registrations. The consensus view of panels is that "[w]here the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case". See WIPO Overview 3.0, section 1.2.1. Therefore, the Panel finds that the Complainant has rights in the PLUGPLAY Mark.

The Disputed Domain Name substantially incorporates the PLUGPLAY Mark, and is then followed by the generic Top-Level Domain ("gTLD") ".com". The test for confusing similarity 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 disputed domain name. Here, the PLUGPLAY Mark is recognizable within the Disputed Domain Name.

The addition of the letters "s" to "plug" and "play", as well as the inclusion of the term "and" does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's PLUGPLAY mark. WIPO Overview 3.0, section 1.8.

Finally, the addition of a gTLD such as ".com" in a domain name is a technical requirement. As such, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. D2012-0182 and WIPO Overview 3.0, section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's PLUGPLAY Mark.

Based on the available record, the Panel finds that 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 that 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.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a prima facie case. The Respondent has not submitted any arguments or evidence to rebut the Complainant's prima facie case. Furthermore, the Complainant has not authorized, licensed, or otherwise permitted the Respondent to use its PLUGPLAY Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c).

The Disputed Domain Name resolves to a website displaying and selling unauthorized smoking accessories bearing the PLUGPLAY Mark, and thus, the Respondent does not have rights or legitimate interests in the Disputed Domain Name. When Internet users arrive at the Respondent's website, they will find a site in which the Respondent attempts to pass off as the Complainant, purportedly offering, according to the Complainant, counterfeit products to customers. The Panel thus determines that the Respondent is not making a bona fide offering of goods nor a legitimate noncommercial or fair use of the Disputed Domain Name but rather is using the Disputed Domain Name for commercial gain with the intent to mislead the Complainant's customers into believing that they had arrived at the Complainant's website. The Panel also determines that the use of the Disputed Domain Name to pass off as the Complainant to offer competing or potentially counterfeit goods does not confer rights or legitimate interests on the Respondent. See WIPO Overview 3.0, section 2.13.1 ("Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods […] impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent."). By offering to sell THC products online, the Complainant alleges that the Respondent was in violation of the United States Controlled Substances Act.

In sum, the Panel finds that the Complainant has established an unrebutted prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name.

Based on the available record, the Panel finds that 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.

The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith registration and use of the Disputed Domain Name pursuant to paragraph 4(a)(iii) of the Policy. 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.

Panels have held that the use of a domain name for illegitimate activity, such as here, passing off, constitutes bad faith. WIPO Overview 3.0, section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy due to the Respondent's passing off of the Complainant to offer competing or potentially counterfeit goods to unwitting customers.

The Respondent attempted to pass off as the Complainant by creating a similar website offering PLUGPLAY products, demonstrating bad faith. The registration of the Disputed Domain Name was later than the Complainant's first use of the PLUGPLAY Mark in commerce. Therefore, it strains credulity to believe that the Respondent had not known of the Complainant or its PLUGPLAY Mark when registering the Disputed Domain Name. See *Myer Stores Limited v. Mr. David John Singh*, WIPO Case No. D2001-0763 ("a finding of bad faith may be made where the respondent 'knew or should have known' of the registration and/or use of the trademark prior to registering the domain name"). In this regard, the fact that the Respondent featured goods resembling the PLUGPLAY Mark on its website and the PLUGPLAY Mark on many webpages also indicates that the Respondent was aware of the Complainant and its trademarks and official website. Rather, the Panel notes that the composition of the Disputed Domain Name, together with its use, affirms the Respondent's intention to take unfair advantage of the likelihood of confusion between the Disputed Domain Name and the Complainant as to the origin or affiliation of the website at the resolving Disputed Domain Name. In sum, the Panel finds that the Respondent had the Complainant's PLUGPLAY Mark in mind when registering the Disputed Domain Name, another example of bad faith.

The use of a domain name to intentionally attempt to attract Internet users to a respondent's website or online location by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of the registrant's website or online location for commercial gain demonstrates registration and use in bad faith. Here, the Respondent's registration and use of the Disputed Domain Name indicates that such registration and use had been done for the specific purpose of trading upon and targeting the name, mark, and goodwill of the Complainant. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. D2000-0847 ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Moreover, the Panel concludes that the Respondent's registration of the Disputed Domain Name was an attempt to disrupt the Complainant's business. See *Banco Bradesco S.A. v. Fernando Camacho Bohm*, WIPO Case No. D2010-1552. The Respondent's use of the Disputed Domain Name was also likely to confuse Internet users into incorrectly believing that the Respondent was authorized by or affiliated with the Complainant.

Based on the available record, the Panel finds that the third element of the Policy has been established

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 <plugsandplays.com> be transferred to the Complainant.

/Lynda M. Braun/
Lynda M. Braun
Sole Panelist
Date: June 5, 2025