

ADMINISTRATIVE PANEL DECISION

Scentbird Inc. v. lar frank

Case No. D2026-2737

1. The Parties

The Complainant is Scentbird Inc., United States of America ("United States"), represented by Cole-Frieman & Mallon, LLP, United States.

The Respondent is lar frank, Philippines.

2. The Domain Name and Registrar

The disputed domain name <driftusmall.com> (the "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 June 23, 2026. On June 24, 2026, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 24, 2026, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy / User #42aa320d Privacy, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 26, 2026, 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 amended Complaint on June 30, 2026.

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 the Respondent of the Complaint, and the proceedings commenced on July 3, 2026. In accordance with the Rules, paragraph 5, the due date for Response was July 23, 2026. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 27, 2026.

The Center appointed Nicholas Smith as the sole panelist in this matter on August 5, 2026. 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 United States company that since 2019 has manufactured and sold a variety of designer fragrances, including from its primary website at “www.drift.co” (“Complainant’s Website”), under the DRIFT brand.

The Complainant has held a trademark registration for the word “Drift” (“DRIFT Mark”) in the United States since 2021 (Registration No. 6,332,127, registered on April 27, 2021, for air deodorizers; air deodorizing preparations; car deodorizers in class 5 and related services in class 35).

The Domain Name was registered on May 21, 2026. The Domain Name is presently inactive but prior to the commencement of the proceeding resolved to a website (the “Respondent’s Website”) that purported to offer various fragrances under the DRIFT Mark. The Respondent’s Website also copies graphics, layout and written content from the Complainant’s Website and a number of the purported products offered are identical to those offered by the Complainant from its website under the DRIFT Mark.

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 Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the DRIFT Mark, having registered the DRIFT Mark in the United States. The Domain Name is confusingly similar to the DRIFT Mark.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the DRIFT Mark. The Respondent is not commonly known by the DRIFT Mark, nor does it use the Domain Name for a bona fide purpose or legitimate noncommercial purpose. Rather the Respondent is using the Domain Name to pass off as the Complainant for commercial gain by reproducing the Complainant’s mark and graphics, layout and written content from the Complainant’s Website. Such use is not a legitimate use of the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent’s Website to disrupt the Complainant’s business and for commercial gain. Such conduct amounts to registration and use of the Domain Name in bad faith.

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 Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.1](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.1](#), section 1.2.1.

The entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.1](#), section 1.7.

Although the addition of other terms, here "us" and "mall", 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 Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.1](#), 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 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 3.1](#), 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 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 Domain Name such as those enumerated in the Policy or otherwise.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.1](#), section 2.2.

- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.1](#), section 2.3.

- the Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.1](#), section 2.4.

- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

The Respondent has used the Domain Name to operate a website to sell fragrances that purport to be legitimate DRIFT products. It is unclear whether the products sold are counterfeit or genuine products produced by the Complainant. If the fragrances sold on the Respondent's Website are not genuine products produced by the Complainant, the Respondent's use of the Domain Name does not grant it rights or legitimate interests since it is using the Complainant's DRIFT Mark for a website selling counterfeit products.

Even if the Respondent is offering genuine DRIFT products from the Respondent's Website, such use does not automatically grant it rights or legitimate interests. The principles that govern whether a reseller of genuine goods has rights or legitimate interests have been set out in a variety of UDRP decisions, starting with the case of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("Oki Data test").

The [WIPO Overview 3.1](#), section 2.8.1 summarizes the consensus views of UDRP panels in assessing claims of nominative (fair) use by resellers or distributors in the following manner:

"... Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the 'Oki Data test', the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to 'corner the market' in domain names that reflect the trademark.

The Oki Data test does not apply where any prior agreement, express or otherwise, between the parties expressly prohibits (or allows) the registration or use of domain names incorporating the complainant's trademark."

In this case, the Respondent's Website does not accurately or prominently disclose the Respondent's relationship with the Complainant, in particular that it is not an authorized retailer or has any particular connection with the Complainant. Rather the absence of a disclaimer and the fact that the Respondent's Website reproduces the graphics, layout and written content from the Complainant's Website results in the impression that the Respondent's Website is an official website of the Complainant or an authorized reseller. In the circumstances of this case, even in the event that the Respondent is reselling genuine DRIFT products, its use of the Domain Name for the Respondent's Website does not grant it rights or legitimate interests in the Domain Name. Moreover, the nature of the Domain Name itself, which incorporates the Complainant's mark and the terms "us" and "mall", effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

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.

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the DRIFT Mark at the time the Respondent registered the Domain Name. The Respondent has provided no explanation, and neither is it immediately obvious, why an entity would register a domain name that wholly incorporates the DRIFT Mark and direct it to a website purportedly offering fragrances under the Complainant's DRIFT Mark (non-complying with the requirements of the Oki Data test) unless there was an awareness of and an intention to create a likelihood of confusion with the Complainant and its DRIFT Mark. Furthermore, as discussed earlier in the Decision, the Respondent's Website copies numerous aspects of the Complainant's intellectual property from the Complainant's Website. The registration of the Domain Name in awareness of the DRIFT Mark and in the absence of rights or legitimate interests amounts under these circumstances to registration in bad faith.

The Panel considers that the record of this case reflects that the Respondent has passed itself off as the Complainant and purported to offer fragrances, be they genuine or otherwise, under the Complainant's DRIFT Mark on the Respondent's Website without the Complainant's approval and without meeting the Oki Data test. The Panel finds that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the DRIFT Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.1](#), section 3.1.4.

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 Domain Name <driftusmall.com> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: August 13, 2026