

ADMINISTRATIVE PANEL DECISION

Drunk octopus distribution LLC v. Nodar Abuseridze, it managment group estonia ou

Case No. DGE2024-0002

1. The Parties

The Complainant is Drunk octopus distribution LLC, Georgia, represented by IPCS, Georgia.

The Respondent is Nodar Abuseridze, it managment group estonia ou, Georgia.

2. The Domain Name and Registry

The disputed domain name <smugglers.ge> is registered with Caucasus Online LLC (the .GE Registry).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 21, 2024. On May 21, 2024, the Center transmitted by email to the .GE Registry a request for registry verification in connection with the disputed domain name. On May 22, 2024, the .GE Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .GE Domain Name Dispute Resolution Policy (the .GE Policy), the Rules for .GE Domain Name Dispute Resolution Policy (the .GE Rules), and the WIPO Supplemental Rules for .GE Domain Name Dispute Resolution Policy (the Supplemental Rules).

In accordance with the .GE Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 6, 2024. In accordance with the .GE Rules, paragraph 5, the due date for Response was June 26, 2024. The Response was filed with the Center on June 24, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on July 3, 2024. 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 .GE Rules, paragraph 7.

4. Factual Background

The Complainant was established in 2014. It operates a chain of alcoholic beverage stores in Georgia under the brand SMUGGLERS.

The Complainant is the owner of the trademark სმაგლერსი SMUGGLERS СМАГЛЕРС with registration number 27694, registered in Georgia on September 29, 2016, for services in International Classes 35 and 43 (the “SMUGGLERS trademark”). The SMUGGLERS trademark combines the English word “smugglers” with its Georgian and Cyrillic script transliterations.

The Complainant is also the owner of the domain name <smugglers.com.ge>, which it uses for its official website.

The Registrar confirmed that the country of the Respondent is Georgia. The disputed domain name was registered on December 28, 2020. It resolves to an English language website that offers for sale a variety of alcoholic and non-alcoholic beverages with prices indicated in Georgian Lari. The website provides a contact address in London, the United Kingdom.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical with its SMUGGLERS trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name, because it is not commonly known under it, there is no relationship between the Parties, and the Complainant has not authorized the Respondent to use the SMUGGLERS trademark. The Complainant maintains that the Respondent does not intend to use the disputed domain name in connection with a bona fide offering of goods or services and is not making a legitimate noncommercial or fair use of the disputed domain name. According to the Complainant, the Respondent competes with it and attempts to benefit from the Complainant's reputation by misleading customers that they are buying goods from the Complainant's online store. The Complainant also notes that the Respondent offers the disputed domain name for sale through a notice on the associated website.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith. According to it, the Respondent was aware of the Complainant and its reputation when registering the disputed domain name, because the same is identical to the Complainant's SMUGGLERS trademark and is being used for the offering of the same services to customers. The Complainant submits that the Respondent therefore attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's SMUGGLERS trademark as to the source, sponsorship, affiliation, or endorsement of its website or of the products offered on its website, in order to unlawfully compete with the Complainant.

B. Respondent

The Respondent submits that it initially wanted to use the disputed domain name for entertainment services, but the planned project could not be implemented due to certain unspecified circumstances.

The Respondent confirms that it uses the disputed domain name and that it offers it for sale, and maintains that this offer is not illegal. The Respondent denies that it is using the Complainant's brand and claims that “smugglers” is a dictionary word that can be freely used and cannot be appropriated by anyone. The Respondent claims that through the disputed domain name it does not use the trademarks or copyrighted objects of others, that it does not make physical or online sales of any products, that it does not produce alcoholic and non-alcoholic beverages, and that it does not compete with any company in any field.

According to the Respondent, the fact that its website features certain brands of alcoholic drinks is not a copyright violation.

The Respondent maintains that the fact that the Complainant has chosen for its brand a dictionary word does not entitle it to raise claims and demands against others, and if the Complainant wants to use the disputed domain name and conduct its activities through it, it must either register it (if it is free for registration and no one is using it), or it must negotiate with the Respondent who is already using the disputed domain name.

Finally, the Respondent submits that a few years ago it had a discussion with the Complainant about online sales, but they couldn't reach an agreement, because the Complainant had difficulties with the synchronization of the Respondent's website with its internal warehouse software system.

6. Discussion and Findings

6.1. General remark

Given the similarities between the .GE Policy and the Uniform Domain Name Resolution Policy ("UDRP"), the Panel finds it appropriate to refer to the jurisprudence under the UDRP as summarized in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

6.2. Substantive issues

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 the SMUGGLERS trademark for the purposes of the .GE Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the SMUGGLERS trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the SMUGGLERS trademark for the purposes of the .GE Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel therefore finds the first element of the .GE Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the .GE Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

As summarized in section 2.1 of the [WIPO Overview 3.0](#), 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. The Panel accepts as appropriate to apply the same approach in proceedings under the .GE Policy.

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 .GE Policy or otherwise.

The disputed domain name was registered four years after the Complainant registered the SMUGGLERS trademark and is identical to this trademark. It is being used for a website offering for sale alcoholic beverages with prices indicated in Georgian Lari. The Respondent's website provides an address in London, but the Respondent does not maintain that it carries out any activity in the United Kingdom. Rather, it uses the disputed domain name for a website selling alcoholic beverages and states that several years ago it carried out negotiations with the Complainant regarding possible joint activities. The above, combined with the fact that the Respondent's country is Georgia, as confirmed by the Registrar, leads the Panel to the conclusion that the Respondent does its business in Georgia. The Respondent's activity through the disputed domain name thus fully coincides with the activity of the Complainant – the retail sale of alcoholic beverages in Georgia, and the Parties are therefore competitors. The Respondent's website however does not disclose its lack of relationship with the Complainant, and Internet users may well be attracted to it and buy goods from it in the belief that it is operated by the Complainant. The Respondent would thus improperly exploit the Complainant's goodwill in its trademark.

The Respondent maintains that since "smugglers" is a dictionary word, it can be freely used and no one can monopolize it. This can however only be true to the extent the word is not being used to unfairly capitalize on the trademark meaning, e.g., in connection with its dictionary meaning. Here, the Respondent and merely maintains that its activities are legal. Further, the Complainant's SMUGGLERS trademark is duly registered and thus carries with it a presumption of validity and gives rise to exclusive rights of the Complainant in connection with the services in International Classes 35 and 43 included in its scope of protection. The Respondent has not brought forward any evidence that any invalidation proceedings have been commenced against the Complainant's trademark. Therefore, the Respondent's argument has no basis.

Taking the above into account, the Panel concludes that the Respondent has failed to rebut the Complainant's prima facie showing and has not shown that it has rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Complainant has established the second element of the .GE Policy.

C. Registered or Used in Bad Faith

Paragraph 4(b) of the .GE Policy provides that, for the purposes of its Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location.

The Respondent does not deny that it is based in Georgia and carries out its activities there, and that it had knowledge of the Complainant when registering the disputed domain name. The same is indirectly confirmed by the Respondent's statement that it had some negotiations with the Complainant about joint activities several years ago.

The disputed domain name is identical to the Complainant's trademark which was registered four years earlier, and thus carries a high risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1. The Respondent uses it in connection with a commercial website that competes with the Complainant's business in the retail sale of alcoholic drinks, without disclosing the lack of relationship with the Complainant.

The above leads the Panel to the conclusion that by using the disputed domain name, the Respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's SMUGGLERS trademark as to the affiliation or endorsement of the Respondent's website and of the products and services offered there. This supports a finding of bad faith registration and use of the disputed domain name under Paragraph 4(b)(iv) of the .GE Policy.

Therefore, the Panel finds that the Complainant has established the third element of the .GE Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the .GE Policy and 15 of the .GE Rules, the Panel orders that the disputed domain name <smugglers.ge> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: July 17, 2024