

ADMINISTRATIVE PANEL DECISION

Nike Innovate C.V. v. Domains By Proxy, LLC / Jonathan Benloulou
Case No. D2022-0578

1. The Parties

The Complainant is Nike Innovate C.V., United States of America, represented by Stobbs IP Limited, United Kingdom.

The Respondent is Domains By Proxy, LLC, United States of America / Jonathan Benloulou, Canada.

2. The Domain Names and Registrar

The disputed domain names <nikertfkt.com> and <rtfktnike.com> (the “Domain Names”) are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 18, 2022. On February 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On February 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 22, 2022, 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 February 23, 2022.

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 February 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 16, 2022. The Respondent sent informal communications to the Center on February 22, 2022, and on February 24, 2022. The Respondent did not submit any formal response. The Complainant requested the suspension of the proceedings on March 29, 2022. The proceedings were reinstated on April 13, 2022, and the Center notified the Parties that it would proceed to panel appointment on April 13, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on April 14, 2022. 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 global manufacturer of sports shoes and sports apparel that the Complainant, including its authorized partners, sells under the NIKE brand. The NIKE brand was adopted by the Complainant in 1971, and is today among the most recognized and valuable brands in the world. The Complainant has sponsorships deals with globally well-known, elite athletes.

The Complainant recently announced the acquisition of RTFKT, a digital design studio that creates virtual avatars and wearables such as trainers and other collectibles, with the aim of replicating the scarcity of streetwear culture in the digital world. Founded in 2020, RTFKT has already amassed a social media following.

The Complainant owns a large number of trademarks consisting or including the wording NIKE, including Canadian trademark registration number TMA205933, registered on March 21, 1975.

The Domain Names appears to be registered on November 10, 2021. At the time of filing the Complaint, and at the time of drafting the Decision, the Domain Names resolved to parking webpages displaying pay-per-click (“PPC”) links.

5. Parties’ Contentions

A. Complainant

The Complainant provides evidence of trademark registrations, and the fame of its trademark. The Complainant argues that the Domain Names are confusingly similar to the Complainant’s trademark because the Domain Names incorporates the NIKE trademark alongside the brand name RTFKT that recently was acquired by the Complainant.

The Complainant asserts that the Respondent is not authorized or permitted to use the Complainant’s trademark. The Complainant asserts that the Respondent is not commonly known by the Domain Names and is not making any legitimate noncommercial use of the Domain Names. The Respondent has not made any use of, or demonstrable preparations to use, the Domain Names in connection with a *bona fide* offering of goods or services. The Respondent’s use of the Domain Names to host a parked page comprising PPC links does not represent a *bona fide* offering as the links compete with or capitalize on the reputation and goodwill of the Complainant’s trademark or otherwise mislead Internet users.

Finally, the Complainant submits that given the Complainant’s reputation, the Respondent was aware of the Complainant and its trademark. The Complainant argues that the Respondent has intentionally attempted to attract Internet users, for commercial gain, by creating confusion with the Complainant’s trademark. The Complainant’s trademarks were registered before the registration of the Domain Names. Moreover, passive holding of a domain name does not rule out a finding of bad faith use.

B. Respondent

The Respondent sent informal communications to the Center on February 22, 2022, and on February 24, 2022, inquiring about the process. The Respondent did not submit a formal Response.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademark NIKE. The test for confusing similarity involves a comparison between the trademark and the Domain Names. The Domain Names incorporate the Complainant's trademark, with the "RTFKT" as a prefix or a suffix, respectively, for the two Domain Names. The addition does not prevent a finding of confusing similarity between the Domain Names and the trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"), see [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Domain Names are confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register the Domain Names containing the Complainant's trademark or otherwise make use of the Complainant's mark. There is no evidence that the Respondent has registered the Domain Names as a trademark or acquired unregistered trademark rights. The Panel finds no indication that the Respondent is, or has been, commonly known by the Domain Names. The Respondent cannot establish rights in the Domain Names, particularly as it has not made use of the Domain Names in connection with a *bona fide* offering.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel agrees with the Complainant that the Respondent must have been aware of the Complainant when the Respondent registered the Domain Names. It is evident from the fame of the Complainant's trademark, which predates the registration of the Domain Names.

The Respondent has coined the Complainant's trademark NIKE with the brand RTFKT, a brand acquired by the Complainant in 2020. The Respondent's use of the Domain Names to host a parked page comprising PPC links further points to that the Respondent has registered the Domain Names to attract Internet users for commercial gain, by creating confusion with the Complainant's well-known trademark.

For the reasons set out above, the Panel concludes that the Domain Names were registered and are being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 Names, <nikertfkt.com> and <rtfktnike.com>, be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: April 27, 2022